United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7160

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P/S

In The

United States Court of Appeals

For The Second Circuit

MUSIC RESEARCH INC., and ADELPHI RECORDS, INC.,

Plaintiffs-Appellees-Appellants,

vs.

VANGUARD RECORDING SOCIETY, INC.,

Defendant and Third-Party Plaintiff-Appellant-Appellee,

vs.

HERB GART d/b/a HERB GART MANAGEMENT, INC.,

Third-Party Defendant.

UNITED STATES COURT OF APPEALS
FILED
JUN 11 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume I, 1a - 340a

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:
by pltff: 1-26-73

TITLE OF CASE	ATTORNEYS
MUSIC RESEARCH, INC. and ADELPHI RECORDS, INC.	For plaintiff: Baker & McKenzie. 375 Park Ave, NYC 10022
-v-	
VANGUARD RECORDING SOCIETY, INC. and HERBERT S. GART.	
defts.	
VANGUARD RECORDING SOCIETY, INC.	
deft. & 3rd pty. pltff.	
-v-	
HERB GART, d/b/a HERB GART MANAGEMENT	For defendant: [illegible] Ave, NYC 10017 [illegible] for Vanguard
3rd pty. defts. (2-6-76)	Kurtz & Vasallo (3rd.pty.deft) 598 Madison Ave., NYC 10022 421-1870 Deft & 3rd pty pltff (11-21-75)

3/26

UNITED STATES COURT OF APPEALS
FILED
MAY 4 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		1/26/73	Baker & M.	15	
J.S. 6 mailed	Marshal		1/26/73	Clerk		15
Basis of Action: Breach of co [illegible] $500,000.00.	Docket fee					0
	Witness fees					
Action arose at:	Depositions					

BEST COPY AVAILABLE

MUSIC RESEARCH, INC. et ano. -v- VANGUARD RECORDING SOCIETY, et ano.

73

DATE	PROCEEDINGS	
[illegible]3-73	Filed complaint and issued summons.	
[illegible]2-73	Filed summons and entered marshal's return served on Vanguard Recording Society, Inc. by Fred Passick on 1-30-73.	
Feb7-73	Filed AMENDED COMPLAINT and issued summons.	
[illegible]5-73	Filed Stip and Order that the time for deft Vanguard Recording Society to answer amended complaint is extended to 3-9-73. BRIEANT,J.	
[illegible]9-73	Filed ANSWER of deft Vanguard Recording Society, Inc. to the amended complaint.	
Mr 23-73	Filed Consent Order that the motion for summary judgment is hereby adjourned until 5/7/73, So Ordered Brieant J.	
Apr 7-73	Filed Consent Order, that the motion for summary judgment is adjourned until 5/21/73 So Ordered Brieant J.	
[illegible]2-73	Filed stip and order granting time to answer summary judgment is extended from 5/21/73 to 6/4/73. So ordered, Brieant, J.	
May 9-73	Filed deft. Vanguard Recording Society's rule 9(g) statement.	
May 16-73	Filed Pltffs counter-statement to deft's 9(g) statement.	
May 16-73	Filed pltffs affidavit by Lawrence Walter Herman.	
May 16-73	Filed Pltffs memo in opposition to deft's motion for summary judgment.	
May 16-73	Filed deft. Vanguard Recording Society's memo in support of its motion.	
June 6-73	Filed MEMO END. On notice of motion for summary judgment: *** The motion is denied in all respects. So Ordered. BRIEANT,J.	
June 12-73	Filed consent and order that Amended complaint, served Feb. 6-73 is further amended in the form annexed hereto. BRIEANT,J.	
[illegible] 7-74	Filed deft's answer to request to produce	
Jan. 7-74	Filed consent order amending answer served on or about 7-13-74 as indicated--and pltffs' have waived their right to trial by jury--Brieant,J.	
Jan. 8-74	Filed pltffs' affdvt. & notice of motion to compel deft. to permit inspection of documents--ret. 2-15-74	
Jan. 8-74	Filed pltffs' request to produce.	
Jan. 6-74	Filed memo endorsed on 3rd pty. complaint--The within pleading may be served and filed--So ordered--Brieant,J.	
Jan. 6-74	Filed 3rd pty. complaint and issued 3rd pty. summons.	
Jan. 9-74	Filed Stip. & order adjourning pltffs' motion to 2-25-74--Brieant,J.	
[illegible]	Filed affdvt. of Martin E. Silfen in opposition	
Feb. 21-74	Filed supplemental affdvt. of Robert B. Livingston	
Feb. 21-74	Filed memo endorsed on pltffs' motion filed 2-8-74--This motion has been disposed of in accordance with informal directions made in open Court this date-No order is necessary--Brieant,J.	
Mar 21-74	Filed 3rd pty. deft. Answer to 3rd pty. complaint.	K&V
Mar 21-74	Filed pltffs' affdvt. & notice of motion to amend complaint-ret. 5-28-74-	
Mar 21-74	Filed memorandum of law in support of pltffs' motion	
Mar 26-74	Filed memo endorsed on motion filed 5-21-74--Motion granted on consent. The within proposed amended pleading may be filed as of this date-So ordered-Brieant,J.	
Mar 3-74	Filed pltffs amended complaint, with jury trial demanded.	
Mar 13-74	Filed pltffs notice to take deposition of Vanguard Recording Soc.	
Mar 13-74	Filed pltffs answer to notice to produce.	
Mar 14-74	Filed deft & 3rd-pty pltffs (Vanguard) ANSWER to third amended complaint.	MES
Mar 4-74	Filed pltffs notice for production of documents to deft Vanguard.	
[illegible]	PRE-TRIAL CONFERENCE held by [illegible]	
4-21-75	Filed Pltffs' Request to Admit.	
4-11-75	Filed Pltffs' Request to Admit.	

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73 Civ 394 CLB

CIVIL DOCKET — Music Research Inc Vs Vanguard Recording Soc..... — Page#3

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT'S
5-12-75	Filed Deft. Van Guard's Response to Request to Admit.		
5-12-75	Filed Deft. Van Guard's Notice to Produce upon pltffs.		
5-7-75	PRE-TRIAL CONFERENCE HELD BY		
5-8-75	PRE-TRIAL CONFERENCE HELD BY		
5-9-75	PRE-TRIAL CONFERENCE HELD BY		
5-23-75	Filed PRE TRIAL ORDER with Consent.....Briant,J.		
8-22-75	Filed 3rd-pty defts requested jury instructions.		
8-22-75	Filed 3rd-pty defts interrogs for special verdict.		
8-22-75	Filed 3rd-pty defts pre-trial memorandum.		
8-25-75	Filed Pltffs' Requested Voir Dire Qs Questions.		
8-25-75	Filed Pltffs' Requested Jury Interrogs.		
8-25-75	Filed Pltffs' Requested Instructions to the Jury.		
8-25-75	Filed Pltffs' Pre-Trial Memo.		
8-29-75	Filed Trial Memorandum of Defts. Vanguard Recording Soc. Inc.		
8-29-75	FiledDeft. Vangurard's Requested Jury Instructions.		
8-29-75	Filed Deft's Interrogs for Special Verdict.		
10-22-75	JURY TRIAL begun & Cont'd Oct. 22, and Oct. 23, 1975		
10-24-75	JURY TRIAL Cont'd & Concluded Trial Days -(1) Three.		
11-7-75	Filed Letter from . H. Lipsig to Judge Briant dtd 11-6-75.		
11-10-75	Filed Order & Judgment #75,884, that defts motion for a directed/be granted to the extent that claims of pltff (Adelphi) be dismissed, & claims of pltff (Music Research) be dismissed & that (Music R) recover of deft (Vanguard) the sum of $275,000 with costs to be taxed by the Clerk. Claim of deft (Vanguard) against the 3rd-pty deft (Gart) be dismissed with prejudice & without costs.....BRIANT,J Judgment Ent. 11-10-75, Clerk. m/n	verdict	
11-17-75	Filed Bill of Costs on Judgment #75,884, in favor of pltff Music Research, as taxed in the sum of $525.10, & added to the Judgment.....Clerk		
11-20-75	Filed defts notice of motion for a rehearing re judgment.		
11-20-75	Filed defts memo of law in support of motion to set aside the verdict of the jury & enter judgment for the deft.		
11-20-75	Filed deft (Vanguard) Show Cause Order to stay judgment entered entered in favor of pltff.....Briant, J Dtd. 11-24-75		
11-21-75	Filed Stip & Order of substitution of attys for deft & 3rd-pty pltff., & 3rd-pty deft.....BRIANT,J		

D. C. 110

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTER'S EMOLUMENTS RETURNED
11-25-75	Filed Stip & Order continuing Stay of Execution of judgment ent. 11-10-75 pend			
	the hearing and determ. of deft's motion for rehearing of its motion for judgment			
	withstanding the verdict and a surety bond substantially in the form of the appe			
	bond annexed to this stip, and also stayed pending appeal....Breiant,J.			
11-25-75	Filed Bond in Sum of $305,082.86 by The Aetna Casualty & Surety Co.			
12-4-75	Filed transcript of record of proceedings, dated 10-23-75			
12-15-75	Fld Pltff's Memeo of Law in opposition to deft's mjton pur to FRCP Rule 50(b) and 59.			
12-16-75	Filed Stip & Order that deft's tim motion for judgment &/or a new trial...is adj to 1-15-76.....Breiant,J.			
12-17-75	Filed transcript of record of proceedings, dated 10-23-75			
1-26-76	Fld Pltffs' Rebuttal Memo;			
2-18-76	Fld Pltffs' Affdvt in Opposition to deft's motion for a new trial.			
2-18-76	Fld Pltffs' Memo of Law in " " " " " " " " .			
3-1-76	Fld Deft's affdvt by J. Al Vasallo in opposition to to pltff's opposition to deft's motion for a new trial.			
3-3-76	Fld Daft's Reply Memo of Law.			
3-3-76	Fld Letter from Wm J. Powell to Judge Brieant dtd 3-1-76.			
3-3-76	Fld Affdvt of T. B. Hoskins.			
3-3-76	Fld Affdvt of E. R. Rosenthal.			
3-3-76	Fld Affdvt of Wm J. Powell.			
3-3-76	Fld affdvt of M. Cascuna.(copy)			
3-3-76	Fld deft. Vanguard's OSC for order vacating judgment....ret 3-3-76..Brieant,J.			
3-3-76	Fld Memo End on deft's OSC Fld 3-3-76 The Motion is denied...So Ordered..Brieant,J.			
3-4-76	Fld Memo End on Bk of motion Fld 11-20-75....Motion denied. See endorse to a companion motion fld simultaneously in this action so Ordered.Briea			
3-26-76	Fld Deft. Vanguard Recording's Notice of Appeal from Order ent 3-3-76...mn to Baker & McKenzie on 3-26-76.			
3-26-76	Fld Notice of Appeal of Vanguard Recording from order & Judgment ent 11-10-75..mn to Baker & McKenzie....on 3-26-76.			

COPY

J. M. DURANT, Dpt. Clerk

E. Thompson

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MUSIC RESEARCH INC., and ADELPHI RECORDS, INC., Plaintiffs, vs. VANGUARD RECORDING SOCIETY, INC., Defendant, vs. HERB GART d/b/a HERB GART MANAGEMENT, INC., Third-Party Defendant.	73 Civ. 394

Before:

HON. CHARLES L. BRIEANT, JR.,

District Judge

October 22, 1975
10:15 a.m.

APPEARANCES

BAKER & MC KENZIE, ESQS.,
Attorneys for Plaintiffs
BY: LAWRENCE W. NEWMAN, ESQ.,
ROBERT B. DAVIDSON, ESQ.,
WILLIAM J. POWELL, ESQ.,
of Counsel

HARRY H. LIPSIG, ESQ.,
Attorney for Defendant Vanguard
BY: KEVIN CONCAGH, ESQ.,
SCOTT MOLLEN, ESQ.,
of Counsel

KURTZ & VASSALLO, ESQS., P.C.
Attorneys for Third-Party Defendant Gart
BY: JOHN A. VASSALLO, ESQ.,
of Counsel

- - - - -

(A jury of six and two alternates were duly impaneled and sworn.)

THE COURT: At this time I want to thank the members of the panel whose names were not drawn and I ask you all to please return to Room 109. You are excused with the thanks of the Court.

Members of the jury, in just a moment we are going to take a brief recess. The clerk will escort you into the jury room. It is to that jury room behind this court that you will return after the luncheon recess where you will assemble tomorrow morning for the continuation of the matter. It is locked while the court is in session and you may leave any belongings which are more convenient to leave in there if you wish to do so.

I will at this time just outline briefly to you the procedure which will be followed. After the recess the attorneys will make opening statements outlining what they expect the evidence will show.

After the opening statements the plaintiff will present its proof ir plaintiffs will present their proof.

When the plaintiffs' proof is finished, then the defendants will present theirs and the third party and there may be rebuttal testimony.

The law applicable to this case will be contained in rulings that I make as the trial progresses. If I sustain an objection or strike something out you are to put it out of your mind.

It is your function to decide the issues of fact. You should pay very close attention to the testimony so that you will be in a position to do so.

It is very important that you keep an open mind about the case until all of the evidence is in and until I have given you my instructions about the law.

At the same time, you are not to speak to any of the attorneys or witnesses or parties while this case is going on. You are not to discuss the case with each other until after it has been submitted to you for your deliberation. You are not to discuss it at home or with strangers or with anyone else. Not to visit any place which might be mentioned in the testimony. You are to keep an open mind and don't read anything that might have to do with this case or with the subject matter of the case or the industry concerned or anything like that while this trial is in progress. It is very essential that each of you be able to

give a just and fair verdict free from any outside interference of any kind.

I state to you also that what the attorneys say in their opening statements is not evidence. The evidence comes from the witnesses, from the exhibits and from the facts which are stipulated and agreed to in the case.

Questions are not evidence. It is the answers the witnesses give that you must be attentive to. At this time we will have a brief recess. Please withdraw to the jury room.

(Jury left the courtroom.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record. The Court has just observed, Mr. Powell, that a gentleman of the same name as yours is listed on the witness list in the pretrial order.

MR. POWELL: Yes, sir.

THE COURT: Had I known that, of course I would not have admitted you to sit at the counsel table and act as an attorney in the case. If there is any likelihood that you are going to be testifying --

MR. POWELL: There is no likelihood, your Honor, that I will be testifying for the plaintiff.

MR. NEWMAN: Your Honor, I might say that the only

possibility which might exist is if something comes out in the course of cross examination which requires rebuttal, it is conceivable, that is, there is a possibility that Mr. Powell's testimony might be required.

THE COURT: In that case he cannot be counsel. He cannot do both things in this case.

MR. NEWMAN: I appreciate that. I assume that doesn't bar him from sitting at the counsel table and assisting?

THE COURT: You know he can do that, but the jury will see him there and they will know that he has a direct and vital interest in the case and it will go to his credibility. He can be asked on cross examination, isn't it true, Mr. Powell, that you have been sitting here out with Mr. Davidson and Mr. Newman all during this trial, so my suggestion to you is don't, but I will not bar him from doing it.

Is there anything you want to say?

MR. NEWMAN: The problem is simply one of being able to confer with our clients.

THE COURT: You can confer. He can sit in the front row and confer with you during all the recesses. If you have not conferred with him enough by now you should not be here to try this case today.

MR. CONCAGH: Judge, I would object to Mr. Powell sitting at the counsel table during the course of this trial because of the undue prejudice it may have on the defendants in the case.

THE COURT: I think the prejudice cuts the other way. It would be prejudicial against the plaintiff and properly so. I will overrule your objection.

You said to me earlier or you suggested informally that you were going to call him?

MR. CONCAGH: Very likely.

THE COURT: To testify as to what?

MR. CONCAGH: The facts and circumstances regarding the corporate setup of the plaintiff Music Research in which he was one of the incorporators or the attorneys.

THE COURT: Hasn't that all been agreed to in this case? I am not going to try indisputable facts like that.

MR. CONCAGH: I don't know whether it will be developed by the plaintiffs on their direct case.

THE COURT: You write out what you think the facts are. If there is no controversy about them they will be stipulated to.

Following the openings I will read the undisputed facts from the pretrial order to the jury. Are you going to

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open?

MR. NEWMAN: I will, your Honor.

THE COURT: How long do you need?

MR. NEWMAN: I have about ten pages here. Two minutes a page, perhaps, 15 or 20 minutes.

THE COURT: 20 minutes.

MR. NEWMAN: Your Honor, may I inquire as to your ruling regarding Mr. Powell's presence or absence at counsel table?

THE COURT: He may be present assuming you are not calling him as a witness. If you have him present at your counsel table, you cannot call him as a witness on your main case.

MR. NEWMAN: On our main case?

THE COURT: That is correct. I am not going to have him called to establish facts which are not in issue, but if he testifies, the jury can be informed that he has possible partiality because he is co-counsel here.

MR. NEWMAN: Those are the facts, your Honor.

THE COURT: All right.

MR. CONCAGH: Your Honor, if I may just mention further that the transcripts of the depositions are replete with references to Mr. Powell's name. There are a number of documents that have been exchanged by both sides bearing the

name of Mr. Powell having to do with Music Research's participation.

THE COURT: That is not enough. It has to be a fact in controversy.

How long do you need for an opening?

MR. CONCAGH: 20 minutes.

THE COURT: How about you, Mr. Vassallo?

MR. VASSALLO: I expect 10 to 15 minutes, your Honor.

THE COURT: All right. We will be in recess.

MR. NEWMAN: Your Honor, may I interrupt for a minute. The subpoena which was served on the defendant Vanguard I don't think has been fully complied with. I would like to have the opportunity of having the documents which we subpoenaed particularly to refresh the first witness' recollection prior to his testifying.

THE COURT: What hasn't been produced?

MR. DAVIDSON: Your Honor, the first item which I asked for doesn't appear, the first thing on the list, the Vanguard phonograph records including covers and jackets embodying the Newport Festival of 1963. No. 1 on the subpoena.

THE COURT: Tell me about the pretrial order.

MR. DAVIDSON: It is Vanguard's albums, No. 59.

THE COURT: Where is No. 59? Produce it, please.

All right, Mr. Concagh, where is No. 59?

MR. CONCAGH: Mr. Mollen has those documents. We have just given counsel for the plaintiff.

THE COURT: I don't have time to referee petty childish squabbles about the exhibits.

What else is it you claim you don't have?

MR. DAVIDSON: We have not had a chance to peruse this and I know that record albums are not included in this pile.

THE COURT: It is No. 59. Hand it to the man. The albums here don't refer to the albums we subpoenaed. The Newport Folk Festival albums of '63 and '64. One was marked, a Xerox was marked as an exhibit.

MR. CONCAGH: My client has advised Mr. Mollen that we are searching for that right now.

THE COURT: It is on the list of the pretrial exhibits.

MR. CONCAGH: It is on its way, Judge.

THE COURT: All right. Anything else?

MR. DAVIDSON: If we could just review quickly perhaps with the help of Mr. Concagh and Mr. Mollen to determine whether or not simply three documents which are on the list and also the royalty checks which are listed as No.

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4 in the subpoena.

THE COURT: I am not concerned with the subpoena. Go by the pretrial order.

MR. DAVIDSON: There are just certain documents in the pretrial order and if, in fact, I could have the help of Mr. Mollen during the recess we can cull those that we will need for Mr. Hoskins, the first witness' testimony.

THE COURT: Five minutes recess.

(Recess)

(In open court; jury present.)

THE COURT: Mr. Davidson, you may make an opening statement in behalf of plaintiffs.

MR. NEWMAN: If your Honor please, I will be making the opening statement.

THE COURT: You are Mr. Newman?

MR. NEWMAN: Yes, I am.

THE COURT: I am sorry.

MR. NEWMAN: Ladies and gentlemen, as you have heard, my name is Lawrence Newman and I am with Robert Davidson who is sitting next to me and will be representing the plaintiffs in this case who are two corporations, Music Research and Adelphi Records.

In any trial, as those of you who have served on juries before know, the lawyers have an opportunity at the

beginning to describe to the jury what their client's case is about. I am going to try to tell you in a few minutes what the two plaintiffs in this case intend to present to you as evidence.

Now, at this time I can only give you a preview of what our clients intend to present as evidence.

In trials evidence cannot and ordinarly does not come to you in a clear way as it would if a single person were sitting down and giving you a narrative coherently of everything that happened beginning at the beginning and ending at the end. Unfortunately, instead the evidence has to come to you in bits and pieces. The process you have to go through is a bit like putting together a jigsaw puzzle or mosaic rather than listening to a story so it does make it a little more difficult for you.

My purpose at this point is to attempt to describe to you what the plaintiffs will show so that you will have a better idea when you do hear the witnesses, when you do examine the exhibits and have them read to you just how that evidence will fit into the plaintiffs' case as a whole.

Basically this is a case concerning the wrongful use and misappropriation of property belonging to plaintiffs. One of the plaintiffs, as I said, is called Music Research. It is a Washington, D.C. company controlled by Thomas Hoskins

who is sitting over there in the -- the gentleman on the left of the first row. Mr. Hoskins through his company had a contract with a folk singer by the name of Mississippi John Hurt. This was in 1965. The other plaintiff, which is Adelphi Records, several years later around 1970 acquired from Music Research rights to produce records from the songs of John Hurt recorded pursuant to the contract that John Hurt had with Music Research and Thomas Hoskins. Adelphi Records is managed by Eugene Rosenthal and you can see him who is the third gentleman over from the left.

Back in late 1963 Thomas Hoskins was, as he still is, a student and an enthusiast of folk music. That is a field to which he has devoted himself virtually all of his adult life. He knew from his studies in folk music and listening to old out-of-print records that there existed songs recorded back in the late 1920's by a highly regarded folk singer by the name of Mississippi John Hurt. Unfortunately no one had heard of John Hurt since the Great Depression of the 1930's when he apparently had stopped recording music. He was at the time a blues singer generally regarded as one of the authentic voices of poor world black life in Mississippi and the songs he wrote and performed are simply addressed to the hardships and reality of Mississippi sharecroppers.

Although no one knew where John Hurt was in 1963, Tom Hoskins after listening to the John Hurt records that he was able to find, old 78 rpm, concluded that John Hurt might still be alive even though many years had passed.

He went to Avalon, Mississippi, a place mentioned in one of John Hurt's records, and he discovered there that John Hurt was still alive and working in Avalon doing what he had done most of his life, farming for $28 a month.

Tom went to Avalon, talked to John Hurt and persuaded John to start singing again for the public and to make records. Hurt had no money. He had a wife and grandchildren to take care of. Hoskins had little money. He arranged with some partners, whom he later parted company with a few years later, who did have some money to form a company, this corporation called Music Research, and through it to take care of Hurt and his family and manager Hurt's affairs so as to enable Hurt to concentrate on his music and to leave the life he was living in Mississippi. Hurt at this time was a man in his early 70's.

So John Hurt and Music Research entered into a contract in March of 1963 pursuant to which Music Research obtained the rights to represent Hurt in effect at concerts and recordings and similar public appearances and to control the releases of Hurt's music.

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The contract between Hurt and Music Research was carried out for a year or two. The manner in which it was carried out was that Tom Hoskins, who is a musician himself, a guitar player, traveling with John Hurt who was a man who had very little experience outside of Mississippi, never traveled before, and he needed someone to go with him literally to take care of him, take him to concerts. Hoskins also arranged to pay the bills for John Hurt's wife Jessie and to escort, as I said, John Hurt to the various concerts which Hoskins arranged through booking agents for John Hurt.

Now, the contract was not carried out in all of its terms, however, for Music Research did not take all the money that it was entitled to under the contract. The money that was earned and it wasn't a great deal went primarily and directly to John Hurt and paid his expenses and for the expenses of traveling to concerts and food and hotels and so forth.

There simply was not enough money coming in to allow for much compensation for Music Research so Hoskins did not take much hoping and planning on making a substantial profit for his company later sometime in the future after Hurt had gained some wide exposure and established a national reputation. That would be after John Hurt's records started to sell in large quantities.

As I say, Hoskins wanted to build up a name for John Hurt as a folk singer. Hurt had not been heard of for several decades. Hoskins' company, the Music Research, had a label, a record label which it called Piedmont Records and it did release two long-playing albums of Hurt's music under Piedmont in the early 1960's, shortly after the contract was entered into. But Piedmont did not have the distribution abaility nationwide that a big-name large record company had and Tom thought that the way to establish Hurt's reputation to get it widely known was to permit John Hurt to record with a big name record company so that that company could distribute his records, thereby enhancing the value of the songs that John Hurt had recorded for Hoskins and which Hoskins had referred to in his vault. Not physically a bank vault, but it is the expression used to describe where they get the acetate and recordings.

That was in 1965. Earlier in 1963 and 1964 John Hurt gave concerts and came to be widely known. Publicity came out about his being discovered and Vanguard Recordings, the defendant in this case, which had the rights to record all of the performances at the Newport Folk Festival in 1963 and '64, requested from Hoskins and Music Research the rights to record certain of John Hurt's performances at the 1963 and 1964 Newport Folk Festival on the record albums

which Vanguard was making of those concerts.

Hoskins and Music Research were willing to give up most of their rights to derive income from these performances and recordings thereof so as to gain increased exposure for John Hurt. So Music Research gave permission to Vanguard for Vanguard to use Hurt's performances on portions of those records made from that 1963 and 1964 Newport album.

Around this time Tom Hoskins knew a man named Herbert Gart who is named in this case by the defendant Vanguard as a third-party defendant on the theory that Vanguard is liable to plaintiffs, then Gart must be then liable to Vanguard. Mr. Gart is the second gentleman from the right sitting. He is sitting next to Mr. Maynard Solomon of Banguard Recording Society, which is the defendant.

Hoskins and Gart, who was a booking agent, someone who arranges for concerts and so forth, agreed that Gart would go out and try to find a major record company which could record and release two long-playing records by John Hurt. Hoskins reasoning was, as I said, was that if he gave up the right to publish records of John Hurt with respect to two recordings, that he would still have left in his vaults enough material after the two records gained wider public

acceptance for John Hurt to put out about five long-playing records which he could then release and finally recoup his investment hopefully and reasonably to make substantial profits.

Gart initially went to a very large recording company called Mercury Records, but there was not agreement reached with that company. Then Mr. Gart informed Hoskins that the Vanguard Recording Society, which as I said previously, had the two recordings of the Newport Folk Festival, might be interested in putting out the two records. So after securing permission from Hoskins to do so Gart went to Vanguard, which was a well-known, important recording company particularly in the folk music fields.

Hoskins instructed Gart to negotiate with Vanguard to permit no more than the two long-playing records so as not to jeopardize the value of what he had in bulk in the vault.

Gart negotiated with Vanguard, which was acting through its principal officer, Mr. Solomon, whom I pointed out to you, and in November 1965 drafted a recording contract between Vanguard and John Hurt to be signed by Solomon on behalf of Vanguard and signed by John Hurt, of course, and by Herb Gart as business manager and Tom Hoskins as Hurt's personal manager.

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In spite of the fact that there existed an eclusive contract between John Hurt and Music Research of which Mr. Solomon was well aware, Mr. Solomon obtained the signatures of John Hurt to the contract, but he never did obtain the signature on the contract of Tom Hoskins. Hoskins was, therefore, unaware of its contents.

Although the contract had been prepared with a space for the signature of Tom Hoskins on the lower lefthand portion of the page, Solomon eliminated the lack of having his signature of Mr. Hoskins by the simple expedience of simply scissoring or cutting off the lower lefthand portion of the page where Hoskins' name and the place for his signature would appear.

Mr. Solomon and Vanguard then went on to record and release phonograph records of John Hurt's music.

Tom Hoskins was never told that Hurt had signed a written agreement with Vanguard to record record albums. The agreement which actually was signed between Hurt and Vanguard did not permit Hurt to record only two records for Vanguard. Instead it required a minimum of two phonograph albums. Hoskins was under the impression during this time that arrangements had been made for the two record albums to be released by Vanguard. Since he had no financial interest in these two albums, as I say, he was interested

only in enhancing John Hurt's reputation, he took no action when Vanguard put out the two albums, one in 1966 and the other one shortly after John Hurt's death in or about November of 1966. The first was called "Mississippi John Hurt Today," and the other after John Hurt's death was called, "The Immortal Mississippi John Hurt."

So in 1970 after John Hurt died Hoskins entered into an agreement with Adelphi Records and Mr. Rosenthal under which Adelphi would record and that they planned to make what was left in the library, the vault material and recorded by Hurt prior to Hurt's death. The Adelphi record was to be one that they planned on initially was to be called "John Hurt Memorial Anthology," and was to consist of a set of two long-playing records consisting of songs and possibly interspersed with narrative material of John Hurt's life.

Hoskins and Rosenthal undertook to go through the tapes and prepared to release their two record memorial anthology albums. As I say this was 1970.

Just before they were going to release the record, Vanguard came out with a third album which was a two-record set called, "The Best of Mississippi John Hurt." This third Vanguard release was not authorized by Music Research which had authorized the release of only two albums and even violated the terms of the Vanguard unauthorized

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contract with John Hurt because it consisted of an unauthorized recording made at a live concert given by John Hurt in 1966 and was not made in a studio required under the Vanguard-Hurt contract nor was it approved by John Hurt or by his estate, which was also required by the Hurt-Vanguard contract.

In March of 1971 both Music Research and Adelphi Records through their lawyer in Washington, Mr. Powell, who you see here in the courtroom, demanded that Vanguard stop producing and selling the third album. Vanguard refused and several months later released yet a fourth record album by John Hurt. This one entitled, "John Hurt's Last Sessions."

The effect of the release by Vanguard of the two John Hurt record albums in 1971 was to undermine completely the market for the plaintiff of those two record albums. The record buyers interested in folk music and in John Hurt in particular could and would buy only so many records in a given period of time. Perhaps more importantly, most of the songs recorded on the two Vanguard albums duplicated songs which Music Research had recorded and was planning to release.

In addition, Music Research was planning an album that would be somewhat historical which would retail at $5.95 for two record albums. Vanguard's, which took advantage of the low cost of the live performance, was sold to the public

at $1.95 making it impossible for the quality albums to compete. As a result of Vanguard's conduct, Music Research and Adelphi Records never produced their record of John Hurt publicly and they have never been able to recover compensation for the time and effort and money that Hoskins and in more recent days, Mr. Rosenthal, put into bringing John Hurt back into the public eye and they have lost the money which they spent in preparing the memorial anthology set. They have lost the value that they reasonably anticipated making, realizing from the album and other records that they planned to produce, and the vault's library material that they have has lost virtually all of its value.

Instead, the one who profited here was Vanguard who made money from the unauthorized recordings. Money made from the unauthorized use of what was actually the property of plaintiffs and of John Hurt which property Vanguard wrongfully misappropriated.

What I have just given you is a short summary of what the plaintiffs will show you through witnesses and documents. You will, as Judge Brieant has indicated to you before the case is finally presented to you to decide, receive his Honor's instructions on the legal principles which you will apply to the facts presented to you. I am confident that after you have heard all the evidence presented to you

from all the parties in this lawsuit, you will return a verdict which will justly compensate the plaintiffs for the wrong done to them and for the losses they have incurred.

Thank you very much.

THE COURT: You may make an opening statement in behalf of the defendant Vanguard Recording Society, Inc., Mr. Concagh.

MR. CONCAGH: Thank you, your Honor.

I don't think I am going to be able to please everybody so forgive my back if I turn it to you, Mr. Newman, Mr. Davidson.

Judge Brieant, ladies and gentlemen of the jury. My name is Kevin Concagh. As you have heard I am representing Vanguard Recording Society. Maynard Solomon is the gentleman sitting on the extreme right. He is my client and he will be testifying in this case.

Now, I think it rather important to begin as Mr. Newman began and that is what you hear from Mr. Newman and what you hear from myself is not evidence in this case. What we are allowed to do, we have the opportunity and even the duty to let the members of the jury know at this very early stage before the trial even begins what we intend that the evidence coming from that witness stand will produce and what documents which are given to review at the conclusion

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of this trial or at any time during the course of the trial that are given to you, what we feel they are going to show.

Now, you have heard a lot of references to a fair, a lot of references to unauthorized, you have heard a lot of references to things of that nature with regard to the relationship of Mississippi John Hurt to the Vanguard Recording Society, the defendant in this case. I caution you that these words were given to you, but prior to that it was also told that they weren't evidence so just as what I say isn't evidence, what Mr. Newman said isn't evidence and his saying that things are unauthorized or referring to this unauthorized document or to that is not true at this stage of the litigation, nor will it be true at the conclusion of this trial.

I am going to tell you a few things, I hope I don't get too aggressive with you. I have heard what Mr. Newman said and there are a lot of things that I feel are untrue, but don't take my word for it. Take the words of the witnesses. Look at the documents. Deliberate and discuss. Use your own common sense, that is why you are here when you deliberate on this case.

Mr. Newman has made mention to Mississippi John Hurt. No question about it.

THE COURT: Please use the lectern. I don't allow

walking around.

MR. CONCAGH: No question about it. Mississippi John Hurt was a fine man, a fine musical artist, there is no doubt about that in anybody's mind.

Mr. Hoskins, who is a plaintiff in this case, did go to Mississippi. He says nobody knew where Mississippi John Hurt was. What Mr. Newman meant by that is that Mr. Hoskins didn't know where Mississippi John Hurt was and he had to find him and he did and then he brought him to Washington, D.C. Introduced him to Mr. Hoskins' lawyer. Mr. Hurt wasn't represented. According to Mr. Newman and according to the evidence that this case will disclose, Mississippi John Hurt had been living as a sharecropper since the '30s in Mississippi. He is brought to Washington, D.C. by Mr. Hoskins, meets the lawyer and signs an agreement, quote, unquote "agreement." I don't agree that is an agreement and we are going to bring an expert on the law of these contracts into this court who will testify as to the validity of that which has been referred to heretofore as an agreement.

I will not go into all the various ramifications of that agreement. They are absolutely absurd. But I will give you an idea of what it included. It included a 50-50 split for the musical artist. Again I caution you, listen

to the testimony, listen to the testimony of the experts in this case, people who spend their time in this industry. Listen to the testimony of the plaintiffs about whether any musical artist agrees to share 50-50 with a "manage" "publisher" publishing company all in one man. Music Research wasn't a company, it was one man, it was a post office address for a lawyer and Hoskins and the lawyer was Mr. Powell. Mr. Powell is here in court. Reference has been made to him. So the lawyer and Mr. Hoskins signed Mississippi John Hurt to an agreement that says, we split 50-50 anything, movies, records, appearances, anything, 50-50, but you pay the expenses, Mississippi John Hurt, hotels, food, bookings, traveling, enormous expenses in this type of endeavor. The artist is the one who pays them.

I caution you to keep that in mind when you hear the testimony of the witnesses who do give testimony in this case regarding the custom in the trade, particularly regarding the expert in this field of law, who will testify in this case, Mr. Krasilovsky.

Then Mr. Hoskins puts out two record albums of Mississippi John Hurt of very poor quality. Again don't take my word for it. Listen to the expert and then hold me to it. Hold me to what I say.

Very poor quality two Piedmont albums. They don't

sell very well mainly because of their quality. We have a one-man recording company signing an artist who has been living on a farm for 30 years and he is going to put out to the Piedmont records which sell miserably because of their quality. He realizes he is never going to make a go of this "pot of gold" he thought he found. So he goes to a large recording company and he doesn't do it himself, he gets an agent, Herb Gart. He will testify, he is in this case, he is a third-party defendant. Herb Gart came to us. Vanguard at the time enjoyed a tremendous,and still does, reputation in the folk field of recording. You will hear some of the artists they have under contract at the time and some of the albums it has produced during the course of its lifetime.

So Hoskins has Gart contact Vanguard because they want to get some exposure to ultimately make some money from their pot of gold, Mississippi John Hurt. Vanguard knew Hoskins and Vanguard knew Gart. Vanguard knew that Gart was negotiating on behalf of Hoskins and Music Research.

It is important to note that Gart first went to Mercury and a document will be introduced in this trial having to do with that agreement. That document called for four, four record albums. The Vanguard agreement that was negotiated by Gart on behalf of Hoskins and Music Research

called for a minimum, not two and only two as Mr. Newman has said, but a minimum of two record albums.

It is the position of Vanguard and I think it should -- withdraw that.

It is the position of Vanguard that when they are doing business with somebody representing himself to be associated with Music Research, Vanguard is doing business with somebody representing somebody associated with Hoskins who at the same time claims to be the President of Music Research, Vanguard has the right to rely on the word of Herb Gart, particularly, particularly, and this is overwhelming, when Hoskins comes to the recording sessions conducted by Vanguard of Mississippi John Hurt. He makes no objection. He is totally acquiescent in the arrangement made by its agent.

They come to court and tell us that we should have dealt with Hoskins. After we dealt with Gart, after we made an arrangement with Gart, after we made an exclusive contract for the recording rights of Mississippi John Hurt with Mississippi John Hurt himself, the artist. There is nothing that says in the law or anywhere in this world that a recording artist has to be somebody's property. He negotiated this contract. He was represented by Mr. Gart. Mr. Hoskins knew all about it.

Of course Vanguard wanted Mr. Hoskins to sign this agreement because Mr. Hoskins had put out two Piedmont records of poor quality and Vanguard's first record album was to be a rerecording of what was good music, but done so poorly that it had to be rerecorded and, indeed, Vanguard's first album was a rerecording and Vanguard wanted Mr. Hoskins' agreement to rerecord the Piedmont albums that had been put out and that had been flops.

It was Mr. Hoskins who attended those recording sessions where all this rerecording was going on. Could you believe this? This is what we are going to boil this case down to, would you believe such a tale that somebody came into your living room and told it to you? There is nothing fancy, nothing complex about this. It is a question of do you believe this tale. I don't.

Then after Hoskins, the plaintiff in this case, Music Research-Hoskins, attends the recording sessions, he decides to do nothing and this is in 1966 that the first recording session was. I believe it was February of 1966. He said, "Well, I saw some agreement, but I didn't know what it was." There is an agreement and it will be produced. He clipped his name off of it or somebody acting under his control clipped his name off that agreement.

Mr. Solomon received the agreement with Mr.

Hoskins' name clipped off, he called his lawyer right away and said to his lawyer, Mr. Ross, what significance does the fact that Mr. Gart's signature is on the agreement, the artist Mississippi John Hart has signed the agreement, yet the signature of Mr. Hoskins isn't there?

MR. NEWMAN: Your Honor, I am not sure that we are talking about admissible testimony here.

MR. CONCAGH: It will be introduced.

THE COURT: This is all taken subject to connection.

MR. CONCAGH: Mr. Solomon's position is the artist signed it, the agent, the agent of Music Research and Mr. Hoskins, one and the same, signed it and he wanted Mr. Hoskins to sign it to be able to rerecord the Piedmont two record albums and it wasn't there, but then when Hoskins went to these recording sessions, he made no objection to the rerecordings, what would be the need of then securing his signature? His agent had already signed it. His artist already signed it and he knew about it.

Then in 1973 he sues Vanguard Recording Society, believe that or not, that is the truth. 1973. A lawsuit is brought against Vanguard Recording Society by Mr. Hoskins and Music Research claiming that there were some interference, you will hear what that is, claiming that they were

damaged, they have a vault of Mississippi John Hurt tapes, don't take my word for what they were like, don't take my word for quality of this vault was, listen to the experts who will testify. Listen to the people who are qualified to testify in these areas. I am not suggesting I am. Nor am I suggesting that it would be my place.

So in 1973, this is a period of some seven years after the recordings, they decide to bring the suit. A successful record company in New York, Vanguard Recording Society, we'll sue them. Yet in 1965 an agreement, an exclusive recording agreement was signed by Mississippi John Hurt, Herb Gart and Maynard Solomon. Records were made.

A third album was released in 1970 and the third album, and you will hear what the custom in the industry is, was of extremely high quality. You will hear that it was recorded at an Oberlin College concert, a very, very common way to cut records. It was recorded on exceptionally good quality equipment and it was recorded by a man named Bob Scherl with the knowledge and consent of Mississippi John Hurt. It was recorded in 1966 and when Mr. Scherl was in the employ of Mr. Solomon, he mentioned to him that he had an excellent recording of Mississippi John Hurt at Oberlin College made in 1966. Arrangements were made, Vanguard had an exclusive agreement with Mississippi John Hurt, his estate

was getting checks from Vanguard. I would be curious to hear during the course of this trial what Mississippi John Hurt got from Music Research. I would be curious during the course of this trial to hear what payments were made to the estate of Mississippi John Hurt by the plaintiffs, Music Research.

They come to court and tell you they found this man and they made this man a success. Unfortunately, I don't know whether it was touched on by Mr. Newman, Mississippi John Hurt passed away in November of 1966. Seven years later Music Research decides to come to New York and sue Vanguard. Hoskins' lawyer has just said himself that Mr. Hoskins was never told by Mississippi John Hurt that he signed the contract with Vanguard. What does Mr. Hoskins think Mississippi John Hurt was at Vanguard studios recording albums for? What did Mr. Hoskins think on the second album? What did Mr. Hoskins think when Herb Gart had conversations with him telling him that Mississippi John Hurt signed this agreement. Hoskins had no objections. He was looking to cash in. He had an agent go out to make a deal.

I can only ask you in conclusion to listen very carefully to the testimony. Read very carefully the documents. Listen very carefully to his Honor at the end of this trial when Judge Brieant charges you on what the law is.

I also ask you to use your common sense that you came into this court with. Use your common sense which is the reason why we have six jurors deciding such a dispute. Hold me to what I say because at the end of this trial I will be back before you, it will be my privilege to at that time make a closing statement with a similar purpose. Carefully consider what Mr. Newman said in his opening statement and I ask you to hold me to mine.

I thank you all very much. Thank you, your Honor.

THE COURT: Thank you, Mr. Concagh.

Mr. Vassallo, you may make an opening statement in behalf of Mr. Gart and Herb Gart Management Corporation.

MR. VASSALLO: Counsel, ladies and gentlemen of the jury: My name is John Vassallo. I represent Herb Gart, doing business as Herb Gart Management, Inc.

As his Honor told you for lack of a better term, we will refer to him from time to time as the third-party defendant in this action. Mr. Gart was already introduced to you by other counsel. Since he may change his seat from time to time, I will tell you he is the heaviest litigant in this case.

I come last. The judge and my colleagues have already talked to you about the purpose for this talk. We all agree about one thing. What the attorneys say is not

evidence and our clients' claims and rights and obligations should not turn on our particular shortcomings or skills as the case progresses.

What counts is the evidence. You will hear the evidence from witnesses who will be sworn and under oath and who will profess to have personal knowledge about what transpired. None of us were there. We are attorneys.

You will also take evidence from documents which we will ask you to read and study and which we may from time to time read to you or portions of to you.

I would like to talk preliminarily about my second opportunity to address you direct. This is my first opportunity. My colleagues and I will only have one further opportunity to do that and that will be in our summations.

At that time we, each of us, will try to piece together the evidence which will come to you piecemeal from witnesses and documents and to tell you what each of us believes the evidence will show or has shown. I suspect we will still be in disagreement at that time as we are now and my hunch is that we will each take a construction which is most favorable to our clients' interests and that is our responsibility, after all, to do that job, to try to tie up the pieces so that you, by drawing on your own good sense, can accept the theory which is most likely to have happened.

My colleagues have each referred in a very general sort of a way to what transpired beginning in 1963 when Mr. Hoskins tracked down Mississippi John Hurt in Mississippi and ended some ten years later when this suit was brought. They have each explained to you how differently they view what happened in that ten-year interval.

They both have agreed about one thing at least. That is that in 1965 or thereabouts, after Mr. Hoskins who operated with Mr. Concagh characterized as a post office one-man corporation, was somewhat frustrated in his efforts to improve the career of a man who had not performed for some 34 years, he decided with Mr. Gart that the appropriate thing to do would be to try to get Mississippi John Hurt signed up with a major record company with the prestige and the facilities, the national facilities to give this man whom everybody apparently loved the kind of exposure that might be the breakthrough for his career.

How was Gart to enter the picture? You will hear from the testimony that Mr. Hoskins in 1963 was 22 years of age. He is going to admit to you that he had never seen a management agreement or a recording agreement or had any degree of sophistication about this business. He liked music. He liked folk music and he liked Mississippi John Hurt and he had a dream and he had ambition. Expertise and

sophistication he didn't have.

In 1965 when he was some 24 years of age he asked Mr. Gart --

THE COURT: Excuse me, please use the lectern.

MR. VASSALLO: I beg your pardon.

THE COURT: No pacing the floor in this courtroom. You may continue.

MR. VASSALLO: I am sorry, your Honor.

He asked Mr. Gart, who had greater sophistication and experience and who had at various times represented recording artists who had been signed to major companies, to try to negotiate an agreement with a major recording company and Mr. Gart did so. Everyone is going to agree. You will hear all of them tell you that Mr. Gart did not receive ten cents for his efforts in conducting the negotiation with Mercury, which Mr. Concagh told you about, and then with Vanguard and that latter contracts, of course, gives rise to this lawsuit.

The financial interest that Mr. Hoskins' attorney told you he had, namely, the possibility at some future date of recouping his investment, was similar to the limited financial interests that Mr. Gart had, having taken not five cents for his efforts for Music Research or Vanguard, having taken not five cents of the monies paid by Vanguard to

Mississippi John Hurt, he was satisfied in taking the position that if this accomplishes our objective and if Mississippi John, because of his new prominence as a recording artist because of these outlets, is able in future years to perform for more money and if I book those engagements, get him the dates and make the arrangements and everything else, I will take a commission and my commission income will be more substantial than it would be now because he will be earning more, my commission will be based on greater earnings and I will be satisfied.

Mr. Gart didn't have a written contract with anybody. He shook hands with Mr. Hoskins and said, "Fine, that is a deal. You will be the exclusive booking agent and if it happens, we will both make money." It didn't happen to Mr. Gart because unhappily Mississippi John died in 1966.

Gart had nothing to do with any of this since 1966. Mr. Newman told you that the nub of his case is that Vanguard released a third and fourth album.

He mentioned to you that Mr. Hoskins didn't do a thing, just let the first and second albums happen because he had no immediate stake. He wasn't to receive any money on account of them and was not concerned. He is complaining about the release of a third and fourth album which happened in 1971 and 1973. That is more than six years after Mr.

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Gart discontinued any role whatever in the entire course of events.

The evidence is going to show that by 1973 when this lawsuit was brought, actually it is as early as 1966, within six or seven months after the Vanguard-Mississippi John Hurt agreement was made, before, years before for release of the third and fourth album, Vanguard's attorney was already exchanging correspondence with the plaintiffs threatening the plaintiffs that if they didn't turn over immediately the inventory of recorded material which Mississippi John Hurt had made for Mr. Hoskins' company, Vanguard was going to sue them. So we know that from 1966, years before either party did anything giving rise to a lawsuit, they were threatening to sue each other.

They both knew as early as 1966 what their respective claims were. Tom Hoskins and his company did nothing in all the years after 1966.

Vanguard released a third album in 1971. It released a fourth album in 1973. Hoskins in the meantime, after getting a letter from Vanguard's attorney, which you will see in evidence, saying, "Deliver those tapes to me or we are going to sue you," goes out and makes a deal with the other plaintiff, Mr. Rosenthal, who is buying the right to release recordings and doesn't bother to tell him that

Vanguard had threatened years earlier to sue him unless he immediately turned over to Vanguard precisely what he was selling to Mr. Rosenthal.

Vanguard knows Music Research claims, but blithely releases albums 3 and 4. How anybody can tie this up to Mr. Gart escapes me. I have the privilege of getting two bites at the apple.

I think plaintiffs don't have a case. I agree with Mr. Concagh and at the conclusion of this trial I think I will be able to refer to further evidence which supplements what he told you.

If plaintiffs in your judgment have a case against Vanguard, I have the opportunity to try to convince you that Vanguard should not recover its losses against my client. He departed the scene six years before any of the damage got done, he didn't make a dime, had no motive whatever to deceive anyone and who should be totally absolved of any liability in this case.

Thank you.

THE COURT: Members of the jury, at this point I want to discuss with you anotherpoint concerning this trial. Besides evidence which will come from the testimony of witnesses or from documents which are received as exhibits in evidence, there are also some undisputed facts in the case.

You jurors and the Court are too busy to try uncontested issues so where there are undisputed facts it is proper for the attorneys to agree in open court that those are the facts. As to any fact which has been stipulated or agreed to as undisputed, you may treat that fact just the same as if it had been proved to your satisfaction by sitting here and listening to someone testify about it. When I say some witness, I mean a witness you believed.

Now, there is also to implement that policy a pretrial order entered in civil cases and the pretrial order recites certain facts which are presently known to be undisputed. You may hear other undisputed facts stipulated to as the trial progresses.

I am now reading to you the undisputed facts from the pretrial order.

"1. Plaintiffs are corporations organized and existing under the laws of the District of Columbia. Principal place of business of plaintiff Music Research, Inc. is in the District of Columbia and the principal place of business of Adelphi Records, Inc. is in the State of Maryland.

"Defendant," by that I mean Vanguard, "is a corporation organized and existing under the laws of the State of New York having its principal place of business in

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the County of New York.

"2. On or about March 15, 1963 John S. Hurt entered into a contract with Music Research, Inc. in the form annexed to the plaintiffs' complaint.

"3. On or about November 30, 1965 a written instrument was entered into containing the signatures of John Hurt, Maynard Solomon on behalf of defendant Vanguard Recording Society, Inc. and Herbert Gart, the third-party defendant in the form annexed to plaintiffs' complaint.

"4. On or about June 8, 1970 plaintiffs Music Research and Adelphi Records, Inc. entered into a contract in the form annexed as an exhibit to plaintiffs' complaint.

"5. John S. Hurt died on November 2, 1966. His wife Jessie Hurt was appointed administrix of his estate.

"6. All documents which the parties hereto stipulate as authentic were sent at or about the dates indicated by the individuals purporting to send them and were received in the normal course of the mails by the individuals to whom they were sent."

Then of course there is a list of those documents and I don't have to go into that list now because that will be made clear to you as they are received in evidence.

Now, at this point I am going to recess for the luncheon period. I ask you, of course, you have heard no

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evidence yet except for the undisputed facts, don't discuss the case. Keep an open mind. Don't speak to any of the attorneys or parties or witnesses, not even good morning, and please return promptly to the jury room at 2 o'clock.

You may now withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: All right, gentlemen. Who is going to be your first witness?

MR. NEWMAN: Your Honor, Mr. Hoskins will be the first witness.

THE COURT: Who follows him?

MR. NEWMAN: Mr. Rosenthal.

THE COURT: I will see you all at 2 o'clock.

MR. NEWMAN: How long will we be going from day to day?

THE COURT: Well, that depends on what other work I have scheduled here. I don't ordinarily work beyond 5 o'clock.

MR. NEWMAN: We can more or less plan on 5 o'clock?

THE COURT: Don't you run out of witnesses. You get them here. This case is going faster than some of you may think. Have them all here.

MR. NEWMAN: I wanted to anticipate that.

THE COURT: You have them here because I don't try

uncontested issues. We are just going to try what is at the heart of the controvery. All right.

MR. NEWMAN: Thank you, your Honor.

(Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In open court; jury not present.)

MR. DAVIDSON: Your Honor, at this time I would like to ask for the two record albums that were subpoenaed which we need for this witness' testimony.

MR. CONCAGH: I mentioned to the Court earlier this morning that a diligent search is being made at the offices of Vanguard Records for that. I understood from Mr. Davidson at the recess prior to lunch, I would have done it myself during the lunch hour, that Mr. Davidson and Mr. Mollen were going to meet at 5 o'clock, correct me if I am wrong, and were going to go over the material other --

THE COURT: You see, I don't understand. This is a marked exhibit, I think it is No. 59 in the pretrial order. How could it possibly be that all of you have come here for trial and don't have it?

MR. CONCAGH: We brought six record albums.

THE COURT: Where are the ones marked in the pretrial proceedings?

MR. DAVIDSON: The ones which I had not received, the ones are strictly in Vanguard's possession and those are the '63 and '64 Folk Festival.

THE COURT: Weren't they marked for identification?

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MR. DAVIDSON: No, we had a Xerox.

THE COURT: You use the Xerox and substitute the original tomorrow morning.

MR. DAVIDSON: We have a Xerox of one and nothing for the other.

THE COURT: How is it you don't?

MR. DAVIDSON: Your Honor, they were never furnished to us. I have attempted to make appointments to get these documents.

THE COURT: How were they numbered if they were never furnished.

MR. DAVIDSON: They were numbered because the plaintiff in its list submitted those documents it intended to use at trial.

THE COURT: You have never seen the document?

MR. DAVIDSON: I have never seen that album, but I know it exists. I am not concerned about seeing that particular record album.

THE COURT: All right, I am directing the defendant Vanguard to produce it not later than 10 o'clock tomorrow morning.

MR. CONCAGH: By all means.

THE COURT: Bring in the jury.

(In open court; jury present.)

THE COURT: Good afternoon, members of the jury.

Mr. Newman, you may call your first witness.

MR. NEWMAN: I call Thomas Hoskins, please.

T H O M A S B Y R D H O S K I N S , called as a witness by the plaintiffs, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEWMAN:

MR. NEWMAN: May I proceed, your Honor?

THE COURT: You may.

Q Mr. Hoskins, where do you live?

A 68 Walnut Avenue, Tacoma Park, Maryland.

Q How old are you?

A 34.

Q Could you tell us your present occupation?

A I am President of Music Research, Inc., and I also buy and sell old 76 rpm phonograph records and antique musical instruments.

Q I am sorry.

A Antique musical instruments.

Q Is that latter activity inside or outside Music Research's activities?

A It is outside.

Q How long have you been President of Music Research?

A Since 1965.

Q How long have you been affiliated with Music Research?

A Since 1963.

Q In what capacity were you affiliated prior to your being President?

A I was a 50 percent stockholder and Vice President and after 1965 I was majority stockholder and President.

Q When was Music Research formed?

A In March of 1963.

Q What was the purpose of forming Music Research?

A The purpose was primarily to produce phonograph records on the Piedmont label and also to engage in buying and selling 78 rpm records and collecting folk music in general.

Q Do you yourself play any musical instruments?

A I play guitar, harmonica, several things.

Q Have you done so professionally?

A No much, no.

Q Now, were you ever acquainted with an individual known as John S. Hurt?

A Yes.

Q Can you tell us how you became acquainted with him?

A Well, from collecting old 78 rpm Victrola records. For several years I had spent time going into mostly the southern states going from house to house, knocking on doors and asking people for old records. Also visiting old music stores, juke box locations and collecting these old records for sale to collectors.

In collecting these records and listening to them I came across several records by Mississippi John Hurt that were recorded in 1928 and 1929 and of all the people I heard on these old records, I thought that John Hurt was the best musically of anybody that I had heard and of all the people in the world that I wanted to play guitar like, it would be John Hurt.

On one of his records was entitled The Avalon Blues and in the song he sings, "Avalon Is My Home Town, It Is Always On My Mind." So taking that clue and coupling it with Mississippi John Hurt, I figured that perhaps he was from Avalon, Mississippi and undertook it upon myself to go down and see if he were perhaps indeed still alive.

Q When was this?

A This was early March of 1963.

Q Were John Hurt's general whereabouts known at that time?

A No, even his name wasn't generally known.

Q You say you went to Avalon, Mississippi and what happened after that?

A Well, I found out where he lived and went and knocked on his door and spent about an hour with him on a Friday evening and just talked to him. He said, yes, he still could play the guitar. He didn't have a guitar.

I told him that I was interested in hearing him play and that I had a guitar and that I would like to come back in a day or so and talk to him further and make a little tape of him playing just on a home tape recorder.

Q Now, were John Hurt records available generally at this time?

A No. No, the only records that were available at that time weren't available. They were the old 78's and the only place that you could find them would be going from house to house or if you were extremely lucky you might find one in a Goodwill or an antique store. They were quite rare.

Q Did the music stores have any songs played by John Hurt?

A I never came across any, no.

Q After your first meeting with Mr. Hurt, did you see him again?

A Yes. I went back two days later, which was on a Sunday, and spent the afternoon with him talking to him,

getting him to play songs on the guitar and making this tape and after hearing him play and seeing just, you know, what kind of attitude he had about perhaps making records and perhaps doing performances for money, he seemed very willing to do something like this.

Q Where was John Hurt living in Avalon? What sort of place was he living in?

A Well, it was a little three-room shack back off the main road about two miles and it was just out in the country. Just a little country, it wasn't even a community really.

Q How old a man was he in March of 1963?

A 71.

Q Did he have an occupation?

A At that time he was working for the man that owned the house that he lived in and he was just taking care of some accounts for the man for which he was paid $26 a month plus the house.

Q I show you what have been marked as Exhibits 78-A through 78-E for identification and ask if you can identify them?

A Yes, these are pictures that I took of John where he was living.

THE COURT: Excuse me. What page of the pretrial

order is this?

MR. NEWMAN: Your Honor, this is not in the pretrial order. This is material which we have just recently obtained.

THE COURT: I am going to adhere to the numbers in the pretrial order in the absence of a showing, I am not going to take anything that is not in the pretrial order.

MR. NEWMAN: The numbers we have numbered the exhibits with are different from the pretrial order.

THE COURT: By what right did you do that?

Let's move along. Hand those to the clerk, please.

Will counsel approach the side bar, please.

(At the side bar.)

THE COURT: Gentlemen, except as they relate to credibility or impeachment or except for very good cause shown I shall not take any exhibits which are not listed in the pretrial order which was entered after great effort on the part of Magistrate Hartenstein of this court on May 23, 1975.

Furthermore, I am going to ask you to close the trial today to correlate your numbers. You may either do it by using the same numbers as are in the pretrial order or you may renumber as you wish. I will not take these pictures in the present state of the record.

MR. NEWMAN: May I inquire of your Honor just for our guidance as to what numbering system you prefer us to use?

THE COURT: I prefer you to number them as they are in the pretrial order so they can be identified by me readily in observing the trial and correlating the proceedings with the order and I could give Vanguard "V" for theirs as a prefix or "G" for Gart to keep the defendants separated out. They have too many to use A, B, C and D as we ordinarily do.

MR. NEWMAN: Your Honor, we could submit to your Honor an exhibit list which we have prepared.

THE COURT: All right. Does it correlate them?

MR. NEWMAN: We could key in our exhibit numbers with the pretrial order exhibit numbers.

THE COURT: Are you in the same fix, you defendants?

MR. CONCAGH: No, your Honor.

MR. VASSALLO: I propose to just offer exhibits that the others have marked, your Honor.

THE COURT: I will permit you to do that. I am not going to take the pictures. You would have to give me a bona fide showing of it why they are not in the pretrial order.

MR. NEWMAN: I can state to your Honor that these pictures have only recently become available to us. They have only recently been unearted by the client.

THE COURT: I am not taking them except possibly for impeachment or rebuttal.

(In open court.)

BY MR. NEWMAN:

Q Referring back to your meeting with Mr. Hurt in March of 1963, Mr. Hoskins, when you listened to the music of John Hurt played, what kind of music was it?

A Well, it was him playing the guitar and singing.

Q What sort of style was it?

A Well, you could say generally in a folk music style. It was a rather unique style of playing the guitar in that he used three fingers to pluck the strings. That is known as finger picking as opposed to using, say, a flat pick and strumming. He would, as he played his song and sang, he would pluck individual notes that accompanied his voice. It was a very unique style.

Q Did he play any particular kind of folk music?

A Well, he played mostly -- he played several kinds. It was what you might call a songster as opposed to many of the Mississippian musicians who would be classified as bluesmen. A songster is a term used to describe a musician

who would, say, play for Saturday night dances and things like this. Would play dance tunes and country fiddle tunes and things along this order.

The music is generally older than blues although he also did play what is called blues music.

Q Had he been playing his music immediately prior to your meeting him in 1963?

A Not very much, no. Occasionally someone might bring a guitar over to his house and say, "John, why don't you play for us," you know, and he would, but he didn't have a guitar at the time and he wasn't what you would call active musically.

Q After the meeting described on Sunday, what happened next with respect to you and Mr. Hurt?

A Well, we discussed, I told him how good I thought he was and he thanked me for that and said that with practice he could be even better and I asked him if he would be interested in making some records and if he would be interested in perhaps coming up north to make appearances at events like the Newport Folk Festival or the Philadelphia Folk Festival and he said he would be. He said he would be very interested.

Q Did you reach any kind of understanding with him around this time as to the basis of the relationship between

the two of you?

A Yes, it was, I told him that I would be able to probably arrange for his appearances at Newport, Philadelphia and places like that and that I would go with him and that we would be in effect sort of partners.

Q Was there any understanding with respect to the partnership?

A What do you mean?

THE COURT: Frame a new question, please.

MR. NEWMAN: Did you ask me to repeat the question?

THE COURT: Frame another question. The witness has said, "What do you mean?"

Q With respect to the nature of the partnership as to what would happen to the monies received and that sort of thing, was there any understanding received?

MR. CONCAGH: I object to leading questions.

THE COURT: Sustained.

Q I show you what has been marked as Exhibit 1 for identification and ask if you can identify it?

THE COURT: What number is that?

MR. DAVIDSON: That is No. 56, your Honor, it is included in the depositions.

MR. NEWMAN: I believe this is the one that has been stipulated to as to its admissibility.

MR. DAVIDSON: It is also the subject --

THE COURT: My reference to 56 is deposition of Maynard Solomon, Thomas Hoskins, Gene Rosenthal and Herbert Gart with exhibits.

MR. NEWMAN: I think it is covered in the portion of the pretrial order your Honor read to the jury. That is the contract.

I want the witness to identify it?

THE COURT: He doesn't have to identify it. Just tell us what it is?

MR. NEWMAN: May I tell the jury, your Honor?

THE COURT: Please.

MR. NEWMAN: Your Honor, this is the management agreement, two pages in length.

THE COURT: Dated?

MR. NEWMAN: Dated the 15th of March, 1963.

THE COURT: Offer it in evidence.

MR. NEWMAN: I offer it.

THE COURT: It is received in evidence.

What number do you want to assign to this?

MR. DAVIDSON: 1, your Honor. It is clipped right on there.

xx (Plaintiffs' Exhibit 1 received in evidence.)

Q I show you Exhibit 1, Mr. Hoskins. Can you

describe the circumstances under which that document was entered into?

A Yes. That is the contract between Music Research and John Hurt for management and recording. Before I left John that Sunday afternoon I asked him if he would be willing to come up to Washington for purposes of signing a contract and of making some preliminary recordings.

About two weeks later I went back down and got John from Mississippi, brought him up to Washington and at that time this contract was entered into.

THE COURT: You brought him up by automobile?

THE WITNESS: Yes, sir.

Q Where was the contract entered into?

A In Mr. Powell's office in Washington.

Q After the entering into of the contract, did Music Research commence to perform services for John Hurt?

A Yes.

Q What did Music Research do?

A Well, we contacted the selection committees at Newport and Philadelphia Folk Festivals and got John bookings into those festivals.

We also made some initial recordings at that time and not a whole lot right there at that time. John, I think he played one place, one coffee house in Washington while he

was there just to sort of see how he would like it and then he went back to Mississippi.

Q Was he prepared to play in public upon the execution of this agreement?

A No, not really. No, that is why we had him play at this one place just to sort of get him used to it and then later before Newport he came back up. We had given him a guitar and --

THE COURT: Who is this "we" you are taling about?

THE WITNESS: Well, myself and two other partners in Music Research.

THE COURT: All right.

Q Who were these two other partners?

A Dick and Louisa Spottswood.

Q All of you participated in the activities with respect to John Hurt?

A Yes.

Q Talking about the period of a year or two following the March date of this agreement, March of 1963, what other services, if any, did you and the Spottswood's perform under the agreement for John Hurt?

A You mean for several years after that?

Q Just talking about the next two years.

A Well, we arranged for other bookings in nightclubs,

concerts.

We also recorded him extensively and produced two LP's of his music.

After a while he became, his popularity began to get to such a degree that we felt that it would be better if he moved north to Washington for a while so that he would be closer to these engagements.

After the Newport and Philadelphia Festivals the interest in him was enormous.

We called, for instance, we called the Washington Post and gave them the basic story. They sent out a feature writer who did a piece on John and the story got on the wire services and then Time and Newsweek Magazines sent people around, they wanted to do articles on him.

Everyone that heard him at the Festival, his reviews were raves.

Q Did articles about John Hurt appear in Time and Newsweek?

A Yes.

Q Did they appear in any other publication?

A Yes, there were articles in Sing Out, Downbeat.

Q When did the Time and Newsweek articles appear?

A I believe in the fall of '63 and '64.

Q Did John Hurt appear at the Newport Folk Festival

in 1963?

A Yes.

Q When was that?

A The middle of July, I believe.

Q Were there any other publications in which articles about John Hurt appeared?

A Quite a few, yes. Little Sandy Review, Blues Unlimited, all sorts of record collector magazines, all sorts of blues --

Q I show you this document and ask you whether that helps to refresh your recollection as to any other publication?

THE COURT: What number?

MR. DAVIDSON: No. 8.

MR. NEWMAN: Simply to refresh his recollection.

THE COURT: I will not have it. It has not been shown that his recollection is exhausted. Take it away from him. What is the number of that document in the pretrial order?

MR. DAVIDSON: 28 is the list of the materials. I believe that list was not intended to be exhaustive.

THE COURT: You can offer any of them that you want to offer if they are listed in the pretrial order.

Q Mr. Hoskins, I show --

THE COURT: Just offer it in evidence. That is the purpose of the pretrial order. You do not have to go through this folderol of showing people papers. Offer the exhibits that are listed.

MR. NEWMAN: I offer Exhibits 7-A, 7-B, 7-E and Mr. Davidson can give the pretrial numbers, your Honor.

THE COURT: What are the numbers?

I will get them later. I will take your representation that they are on the pretrial order.

xx (Plaintiffs' Exhibits 7-B and 7-E received in evidence.)

MR. NEWMAN: May I pass them to the jury, your Honor?

THE COURT: All right.

MR. NEWMAN: May I also state that one of them is a clipping from Newsweek Magazine, July 13, 1964.

THE COURT: That would be 82-G.

MR. NEWMAN: Yes, your Honor. Entitled, "Looking For the Blues." And the other is an excerpt from Folk Song Magazine Singout for November, 1964, pages 16 and 73.

THE COURT: 82-I.

MR. NEWMAN: Yes, your Honor.

THE COURT: Let's go forward.

Q You mentioned that there were two albums put out

under the Piedmont label?

A Yes, sir.

MR. NEWMAN: Pursuant to your Honor's instructions I am offering what we have marked as Exhibits 2 and 3 which are in the pretrial order as Exhibit 58.

THE COURT: All right.

xx (Plaintiffs' Exhibits 2 and 3 received in evidence.)

THE COURT: Is that all of the Piedmont recorings?

MR. NEWMAN: Yes, your Honor, published recordings.

THE COURT: Yes.

MR. NEWMAN: May I describe them and pass them to the jury?

THE COURT: You can hold them up so the jurors can see them. I don't really know that the jurors have to look at them now. You can hold them up and show them to them.

MR. NEWMAN: Exhibit 2, which has been received in evidence, is entitled, "Mississippi John Hurt, Folk Songs and Blues." You can see his picture on the cover.

Exhibit 3 is entitled, "Worried Blues," on the Piedmont label and has Mississippi John Hurt at the Ontario

Place as noted on the cover as well.

THE COURT: Has it been established when these were published?

MR. NEWMAN: I will ask the witness, your Honor.

Q Let me showyou these exhibits that we have just been talking about, Mr. Hoskins, Exhibit 2 and Exhibit 3. Could you tell the jury when each of those was published?

A This one in 1963 probably in the late summer or the early fall and this one --

THE COURT: Which one is "this one?"

Q Refer to them by exhibit number, please.

A No. 2, Exhibit No. 2 was published in 1963.

The second one, Exhibit 3, was published in 1964.

Q I direct your attention to the back of these and ask you if this particular physical record jacket on each of these is precisely the same as the jacket of the record when it was released in 1963 and, if not, in what way it varies?

A The only difference is that here at the bottom where the address for Music Research is was different when these were first released. So we have a different address on there.

Q In 1963 was there any mention of Bullfrog Records?

A No, Bullfrog was not mentioned.

Q Is there any other way in which this Exhibit 2 differed from the record jacket of the record that was published by Music Research in 1963?

A Yes, the logo change up here where it says Piedmont. We had a different design for just this little logo up here.

Q I ask you the same questions with respect to Exhibit 3 which you say was published after Exhibit 2?

A Yes. Again you have the different logo and on the back, Bullfrog was not mentioned when the records were first released and also the address of Music Research is different. Here it is Box 288, Silver Spring, Maryland whereas before it was a Woodstock street address in Arlington, Virginia.

Q Could you explain to the jury what the relationship of Piedmont Records was to Music Research?

A Piedmont Music Research was the name of the corporation and Music Research produced Piedmont Records. In other words, Piedmont Records was simply a record label name for Music Research.

Q Are these two albums that we just referred to, Exhibits 2 and 3, on the market today, that is, available in retail stores?

A I beg your pardon, I didn't hear you.

Q I am sorry. Are these two albums, Exhibits 2 and 3, available today to the public in retail stores?

A Yes, they are.

Q How many of these albums have been sold from their original publication to date? Give us your best estimate about that.

A Probably between 27 and 30,000 for the both of them.

THE COURT: That is a total, 30,000?

THE WITNESS: Yes, sir.

Q Could you tell us with respect to each whether more of one has been sold?

A More of the one marked Exhibit 2, which was the first album, the one released in 1963. It tends to sell slightly more, say 20 percent, 25 percent more than the other one.

Q Are these records still selling today?

A Yes.

THE COURT: I thought you asked him that and he said yes.

MR. NEWMAN: I am sorry, your Honor.

THE COURT: Is it true they are still selling today?

THE WITNESS: Yes.

Q At approximately what rate are they selling per year?

A Somewhere over a thousand copies a year.

Q Each?

A Yes.

Q How much money did Music Research receive or has it received from the publication of these two records?

A You mean total gross?

Q That is correct.

A Approximately $2.40 say times 30,000.

Q How much net?

A Probably between 20 and $25,000.

Q Were these records distributed by another company for a time?

A Yes. We actively, we Music Research, actively had manufactured and produced, packaged and sold the records for about three years. After that time the masters were released to another company who produced and sold the records and paid Music Research a royalty for each record sold.

That lease has now been terminated and Music Research through Mr. Rosenthal and Adelphi Distributors are now producing and selling the records again.

Q Can you tell us how much was received in the way

of royalties from this other company?

A About $6000.

Q How much of that money, if any, did Music Research pay over to Mississippi John Hurt?

A Most of the money that was received from that lease agreement went to John Hurt and John Hurt's widow.

Q Roughly how much would you say?

A I'd say probably 80 percent of it.

Q How was the money paid to John Hurt and his widow, in what form?

A Music Research checks.

Q Are those checks still existent today?

A No.

Q Can you tell us why they do not exist today?

A Well, they do not exist because most of the records that I had for the corporation were in the basement of a house where I was living and it was during the winter and I left for a couple of weeks during which time the oil for the furnace ran dry and the water pipes froze in the house and burst and completely flooded the basement.

Q What happened to the checks?

A Well, all the papers that I had were like pools of sodden, wet paper. You couldn't even peel them apart.

Q When did this event take place?

A I guess around '71. I am not sure of the exact date.

Q With respect to the other money that was received in the way of net revenues from the sale of Exhibits 2 and 3, did any of that go from Music Research to John Hurt or is widow?

A I am sorry, I didn't hear you.

Q With respect to other revenues other than those received from the company which was paying royalties, did any of those monies after expenses go to John Hurt or his widow?

A Monies other than from the lease agreement?

Q Yes.

A Well, there weren't any other income to Music Research.

Q I think I perhaps misunderstood your answer to the prior question. Could you clarify just for the record, if you would, just what monies in toto were received from the sale of this record by Music Research?

MR. CONCAGH: Your Honor, I object. I think the record is clear. It is the attorney who is unclear.

THE COURT: Do not criticize the attorney.

MR. CONCAGH: Forgive me, I withdraw that.

THE COURT: I will permit him to ask the question.

MR. NEWMAN: If I am unclear, your Honor --

THE COURT: No speeches. Just answer the question.

A If I understand you correctly, during the first three years of Music Research, Inc. when we were producing the records ourselves and selling them, the royalties for John Hurt's performances were paid by Music Research to him in the form of Music Research checks and in that case we were handling the sale and distribution.

Then there came a lease period and during that time the royalties from the lease arrangement were paid to John Hurt.

THE COURT: I thought you said only 80 percent of them were paid to John Hurt?

THE WITNESS: Approximately, yes, sir.

Q Prior to this lease or licensing arrangement that you have been referring to, approximately how much money was paid to John Hurt out of that which was received by Music Research?

A Well, for 1964 we have a W-2 form which shows, I believe, some $5000 paid to him.

Q Does that indicate revenues earned from sources other than recordings?

A It is primarily recording royalties.

MR. NEWMAN: I offer Exhibit 8 which is 81 in the

pretrial order, your Honor.

THE COURT: Is it disputed that Mr. Hurt received this money from Music Research?

MR. NEWMAN: I think it was.

MR. CONCAGH: Yes.

THE COURT: All right, I will receive the W-2 form in evidence.

MR. CONCAGH: Not with regard to this exhibit, your Honor. The monies in dispute have to do --

THE COURT: Something else. I will take this in evidence anyway. Let's move along.

xx (Plaintiffs' Exhibit 8 received in evidence.)

MR. NEWMAN: May I pass this document to the jury?

THE COURT: They do not really dispute that he got that kind of money.

MR. CONCAGH: That is correct, your Honor.

THE COURT: All right. Members of the jury, to save time I will tell you that Exhibit 8 states thereon that the total amount of FICA wages paid in 1963 to John S. Hurt were $5,276.68. Federal Income Tax withheld, $423.15 and FICA tax, what we commonly call Social Security tax, $153.91.

MR. NEWMAN: I believe that is 1964.

THE COURT: Yes, I believe it is. It is corrected

to read '64. Let's go on.

Q Did Music Research record songs and other material performed by John Hurt other than those which appeared on the Piedmont labels we just were talking about, Piedmont Records, Exhibits 2 and 3?

A Yes, we have still today about 25 hours worth of material recorded by John Hurt.

Q Is that different from the material that is on these two records?

A Yes.

Q Where was this material recorded?

A It was recorded in several places. Some in the Ontario Place Coffee House. Some at a recording studio, two recording studios in Washington. Some was recorded by Mr. Rosenthal and some was also recorded at the Library of Congress in Washington.

Q Directing your attention to those recordings made in studios as opposed to the Ontario Coffee House, what were the conditions and circumstances under which those recordings were made?

A Well, Music Research made arrangements for him to record for purposes of making records from the tapes.

THE COURT: When were these made?

THE WITNESS: '63, '64 and '65.

Q What was the general nature of the sound conditions and recording equipment and that sort of thing that were used for these recordings?

A They were professional recording studios.

Q Did that include also the Library of Congress?

A Yes.

Q Was there any arrangement made with the Library of Congress?

A Well, the arrangements were we simply, they expressed great interest in having John record, to have tapes of him in the Folk Music Archives.

THE COURT: I thought you said you had the tapes.

THE WITNESS: The Library of Congress has the original tapes that they themselves recorded, but John Hurt being under contract to Music Research, they also would furnish Music Research with copies of those tapes.

THE COURT: All right.

Q Music Research have an exclusive right to the Library of Congress tapes?

A Yes.

Q What is the nature of the material on these 25 hours of tapes?

A It is mostly of John playing and singing by himself. There is also a bit of interview material of him

telling stories and just talking about himself and life, music.

Q How many different songs are on these 25 hours of tape?

THE COURT: Is this in dispute?

MR. NEWMAN: Yes, it is, your Honor. Very much so.

THE COURT: How many are there?

THE WITNESS: About 90 plus songs with, say, 20 variations. A variation would be the same song but sung differently with different words or whereas he would sing at one time with a six-string guitar, the next time he would be singing the same song with a 12-string guitar so probably about 110 different performances plus some hours of interview.

MR. NEWMAN: Your Honor, I am now going to refer to what is in the pretrial order as Exhibit 57 and we have marked as Exhibit 4 and it is a fairly bulky and weighty exhibit consisting of three boxes which I offer in evidence.

THE COURT: At this point I am going to excuse the jury briefly while we discuss this matter.

Members of the jury, take your brief recess. Don't discuss the case, keep an open mind.

(Jury left the courtroom.)

THE COURT: Gentlemen, it has been testified by this witness that he or his corporation has 25 hours of tapes of Mr. Hurt besides the two records which have been offered in evidence and that they were made between 1963 and 1965 at certain places which he has mentioned in his testimony and they cover 90-plus songs and about 20 additional variations and some talk by Mr. Hurt about his background or his life and so forth.

Is there anyone in this room who denies that?

MR. CONCAGH: No, sir, your Honor, the dispute doesn't regard, the plaintiff is saying that the existence of this 25 hours is in dispute, he doesn't represent my position in the case.

THE COURT: I couldn't understand how it could because they are right here. We don't have to fill this record with things that are not in dispute.

MR. VASSALLO: Certainly not, your Honor.

THE COURT: Let's not try issues that are not in dispute. I will not take them in evidence.

This witness has testified that these tapes were made, that he has them and what is on them and that is evidence in the case enough.

MR. NEWMAN: From the defendant counsel's opening statement there apparently is in dispute the quality of these

tapes.

THE COURT: You dispute the quality of the two Piedmont records.

MR. NEWMAN: He also disputed the quality of the tapes. He maintained that there could not have been quality recordings made of the remaining material.

MR. CONCAGH: Of course I had to comment on that because the complaint alleges that this 25 hours is worth something. We claim it is not.

THE COURT: All right, then I will have to take it in evidence. I am not going to listen to 25 hours of tape, gentlemen, get that through your minds. I ask you not to raise issues that are not really issues. If we are talking about whether the tapes are any good, you can have the tapes marked for identification and an expert can say that he played them and they sounded great to him.

All right, we will be in recess, gentlemen.

(Recess)

MR. NEWMAN: I had a suggestion I would like to make regarding these tapes. That is the following: Rather than have experts spend up to 25 hours listening to the tapes and then coming back with their conclusions as to whether they are meritorious or sound good or whatever, I would suggest that we play to the jury one or two selections

from this and one or two from the Vanguard Records and the Piedmont Records.

THE COURT: I would probably permit you to do either one.

MR. NEWMAN: I am suggesting this as a way of speeding up the trial.

THE COURT: I would be willing to let you play selections from it and if the defendants do not think the selections being played are representative they may pick selections of their own. I am not going to listen to 25 hours of tape.

MR. NEWMAN: Of course not, your Honor.

THE COURT: Once it is in evidence, they have a right to have them played.

MR. NEWMAN: I understand that. The only point I am making is that in the last analysis it is the public who buys these records and not experts and I think the jury is just as competent to judge these and I am suggesting, if your Honor please, we might make this arrangement and save ourselves a lot of time and trouble.

THE COURT: All right, you may designate the parts that you wish to play and the defendants will have an opportunity to designate parts they wish to play that they consider.

MR. CONCAGH: The position of the defendant is--and counsel asked me if I would agree to that outside the Court's ear and I had to disagree because the issue here is whether these tapes have any commercial value. They might sound good. I don't quarrel with the possibility that they will sound good, but the issue in this case and what the plaintiffs have made the issue in this case is that they claim to have a vault of 25 hours of tape that have a marketability; that these tapes can be transposed into record albums.

THE COURT: If the tapes do not sound like garbage and if the facts testified by this witness are true, the jury may conclude that the tapes have commercial value. I don't say that they can conclude a specific dollar amount for them. Plaintiff may have to show more than that. It may have to get an expert to put the appraised value on them.

MR. CONCAGH: Exactly.

THE COURT: I agree that the plaintiff can prove by playing samples from the tapes that they are sufficiently audible so that the general public would not feel cheated if they bought them. If you don't like the representative samples he selects, you may play your own representative samples. All I am saying, and I gather that counsel agree, that we are not going to play the whole tapes.

MR. CONCAGH: No, I don't want all the tapes played, Judge. What I am saying is this: It takes a technical expert to listen to a tape --

THE COURT: You can have a technical expert listen to them.

MR. CONCAGH: And to be able to then say whether that can be transposed into a commercial album.

THE COURT: When you get on the defendant's case you can bring that in. He is not going to listen to them in open court.

MR. CONCAGH: Can he listen to those portions that are played?

THE COURT: If he is present when they are played. It is a public courtroom.

MR. NEWMAN: We will make the tapes available to defense counsel's convenience, your Honor.

THE COURT: All right.

(Jury present.)

THE COURT: What are the numbers of these exhibits which have just been marked?

MR. DAVIDSON: Our exhibit number is 4, your Honor, the tapes. They are No. 47.

THE COURT: All right, these tapes will be received in evidence. However, with the understanding that

only representative samples may be played to the jury by all counsel in the case and you are to keep a record of those parts of the tapes that you do play either by footage index or some equivalent means.

All right, they are received in evidence.

xx (Plaintiffs' Exhibit 4 received in evidence.)

MR. NEWMAN: I am just suggesting that we might mark them all as 4.

THE COURT: Yes, I think so. How many boxes are there?

MR. DAVIDSON: Three boxes.

THE COURT: Very well.

Q Mr. Hoskins, did there come a time when the music of John Hurt as played by him appeared on any albums, record albums produced and published by Vanguard Recording Society?

A Yes, sir. When John played at Newport in 1963, '64 and '65 Vanguard recorded the entire festivals at least for the first two years, '63 and '64. They put out sampler records of people who were performing at Newport. On one record they might have like the evening concert and they would have one or two selections by all of the people that appeared on the concert.

They did record John's performances at Newport

and they wrote to us and asked permission to use them on their Newport albums and we gave it to them.

Q How many such albums were published by Vanguard?

A In total I don't know. I think that John appears on two of them.

MR. NEWMAN: Your Honor, they are listed in the pretrial order.

THE COURT: Which numbers?

MR. DAVIDSON: 59, your Honor.

THE COURT: All right.

MR. NEWMAN: As your Honor knows, unfortunately we do not have them.

THE COURT: They can be produced to him.

MR. NEWMAN: In the meantime I would like to offer a substitute, a Xerox copy of one of them.

THE COURT: I understand it is not disputed.

MR. NEWMAN: I would like to show it to the jury. It has been marked as 6 for identification.

THE COURT: It will be received with the idea that an original will be substituted tomorrow if possible.

xx (Plaintiffs' Exhibit 6 received in evidence.)

MR. NEWMAN: I would just like to read --

THE COURT: No more reading. Go ask a question. Let's get the testimony in this case.

MR. NEWMAN: May I hand it to the jury, your Honor?

THE COURT: Yes.

Q Who was it at Vanguard that communicated with Music Research concerning the obtaining of the rights to use John Hurt's music on these two albums covering the performances at the Newport Folk Festival?

A Maynard Solomon.

Q In addition to what you have described to the jury, what other manner of services did Music Research perform for John Hurt from the time of his entering into the contract to his death?

A Well, one of the management services was the fact that John at age 71, 72 and having lived his entire life in the country, he had been to New York once --

THE COURT: No, no, just what were the services. Tell us. What did you do for Mr. Hurt?

A The services were that I had to go with him everywhere that he performed to arrange for transportation, to make sure he got where he was going, make sure that he had a place to stay, make sure that he ate, took baths, the whole, just everywhere he went I had to go with him.

Q Did you perform any services for Mr. Hurt in connection with his musical performances?

A Well, yes, extensively.

Q In preparation therefor?

A Yes, we played guitar together, helped him remember songs that he had forgotten, helped him flush out his repertoire, so to speak.

Q Did John Hurt have a large repertoire?

A About 90 songs with variations.

Q You say trips were made; where were they made?

A Well, all over the country and Canada. The west coast, Newport, the folk festivals in Canada, Chicago, Minneapolis, just all across the country.

Q Did you perform any other services for John Hurt besides traveling with him and assisting him in recalling songs and other musical assistance that you described?

A Well, I would arrange for different people to interview him, take photographs, publicity, things like this.

Q Did you receive any outside assistance for making bookings for concerts and other performances?

A Yes, after the 1963 Philadelphia Festival on recommendation from a friend I met Mr. Herbert Gart who at that time was a booking agent booking folk acts like Buffy St. Marie, Jessie Collin Young, people like this. I talked with Mr. Gart and he was interested in arranging bookings for John. He being in the business, having offices in New

York, I felt that he would be able to get better jobs faster for John seeing as how this was his fulltime business and he was a professional and Mr. Gart did undertake to book John and was his exclusive booking agent for about two years or so.

THE COURT: What years were they?

THE WITNESS: Beginning in September of '63, '64, '65.

Q When did John Hurt die?

THE COURT: That is in the order. I don't have to have that.

MR. NEWMAN: I beg your pardon, your Honor, it is.

THE COURT: November 2, 1966 in case anyone has forgotten. Let's go forward.

MR. NEWMAN: Thank you, your Honor.

Q Did Mr. Gart receive compensation for his services?

A Yes, he took 10 percent of the gross performance fee.

Q Roughly how much of the performance fee was John Hurt making during the period of time when he was performing?

A For the most part he was making all of it except for Mr. Gart's 10 percent plus whatever expenses he and I incurred in traveling to and from

performances. There were some instances in the early part that Music Research did take a percentage of what he earned.

Q Would you give us a rough idea of what the size of the fees were, say, for a given performance?

A Well, we started out at about $100 and wound up somewhere around $2000, $2500.

Q Can you describe to the jury what the procedure was, if any procedure was followed, with respect to the division of monies received for John Hurt's performances?

A Well, generally speaking, Mr. Hart got 10 percent of the performance fee and John Hurt got the rest of it except for the expenses incurred in going to and from the performance. Plane fare, meals, hotel room, all of that sort of thing.

Q What about Music Research, what did it get?

A Mostly Music Research didn't take anything. Like I say, in the early days we did take something, usually around 20 percent.

Q 20 percent of what?

A 20 percent of his fee less the expenses going and coming and if Mr. Cart was involved, less his 10 percent. This money was necessary to, for instance, advertise his records, print up flyers for people who wanted to book him. Just to promote him in general.

Q Can you tell us roughly how much John Hurt earned from the time you discovered him in 1963 until his death in 1966 to the best of your knowledge?

A Perhaps maybe $20,000.

Q How much of that did Music Research get?

A Did Music Research get?

Q Yes.

A I would say not more than a thousand, maybe 1200, something like that. That is a guess.

Q When we say Music Research, do we mean Tom Hoskins?

A No, I mean Music Research.

Q What about yourself?

A I made money from selling 78's and from selling instruments.

Q I meant from John Hurt's earnings.

A From John Hurt's earnings, I didn't take any money from his earnings.

Q Of this total sum that you mentioned, how much roughly did John Hurt get? Also I am talking now about 1963 until November of 1966.

A You mean how much of his gross performance fees did he get?

Q Revenues from whatever source playing the guitar

on records or live.

A At least 80 percent.

Q The remainder of the money went where?

A To Music Research for promotion.

THE COURT: In other words, he got $16,000 out of about $20,000 during that period? Is that your testimony?

THE WITNESS: Well --

THE COURT: That is 80 percent. What are we talking about in dollars here?

THE WITNESS: I would say between a thousand and $1200, but perhaps my percentage is wrong. These are estimates anyway.

MR. VASSALLO: I am sorry, your Honor, I just didn't hear the last answer. Will the reporter indulge me?

(Record read.)

Q I think the question was --

THE COURT: Just frame another question. Don't argue with the witness.

Q Of the total of the $20,000, how much went to Music Research?

A I would say around a thousand or $1200.

Q With respect to the rest of the money, how much went to John Hurt?

A The rest of it.

Q How much went to pay expenses?

A Whatever the expenses were.

Q Could you give us an estimate of that?

A I don't know that I could. It would be very difficult. Say 10 percent. Say 15 percent. You see, it varied too much. Like if we went to the west coast someplace to play a job and, say, we didn't know anyone there, all right, we would have to stay in hotels, eat in restaurants. Expenses would be high.

Also the travel involved. When we came to New York or someplace where we knew people, we didn't stay in hotels. We stayed with friends. We ate in friends' houses. Therefore, expenses on those jobs were very low. So it was a variable thing. It just depended upon the circumstances.

Q I am directing your attention now to the year 1965. During that year did you seek other business arrangements, recording contracts for Mississippi John Hurt?

A Yes. Herb Gart, who was booking John, thought it would be a good idea for John if John recorded for a major company, a large major label. I entertained the idea and asked him what sort of deal he thought that we could get. He said that he knew a man at Mercury and that he would inquire and see.

He did negotiate with Mercury with one Bobby Scott

and Mercury wanted to --

THE COURT: Does Mercury have anything to do with these defendants here?

Mr. Concagh?

MR. CONCAGH: Mercury has nothing to do with Vanguard Records.

THE COURT: Your objection to this line of questioning is sustained. I will not hear about Mercury Records in this case.

MR. VASSALLO: From my point of view I will refer to the negotiation with Mercury on cross examination. It is in my view absolutely at the crux.

THE COURT: I will take an offer of proof from you after the jury has left for the day.

MR. VASSALLO: Very well.

THE COURT: I am not going to have any more of it. Go on to something else. Let's talk about Vanguard. That is what this case is about. Not Mercury. Let's go.

Q Mr. Hoskins, what was the purpose, if any, in obtaining a contract for Mississippi John Hurt with a large recording company?

A Well, my idea was this: that if John were to appear on a major label, his name would be exposed. The records would be more widely distributed than, say, through

Piedmont which was at that time a fledgling company. With the material that we had recorded I felt that if two albums were released on a major label, it would first provide John with a goodly amount of advance money. At this point in time he was getting to where he didn't want to work as much. As he put it, what's the sense in making all this money if I don't have time to enjoy it. So he wanted to be able to sit around and go hunting and relax some.

So, the advance monies from putting John on a major label could take care of that. The distribution and publicity from the major company would make his name even more widely known and would increase the value of the material that I had already recorded. Such that some two or three years after the release of records on a major label, I would be able to bring out the material that I had already recorded and the market would already be created. People that had bought his records, say, on Vanguard would be aware that there are now new records of John Hurt on Piedmont and that they liked John on Vanguard, then they would buy Piedmont Records.

MR. CONCAGH: Your Honor, may I object to that entire answer. The question --

THE COURT: I think you are a little late.

MR. CONCAGH: The witness was rambling on. I

didn't want to interrupt him. I wanted to let Mr. Newman conduct his examination, but he is asking --

THE COURT: The question was what was his motivation in asking Mr. Gart to seek out this type of contact with the major record producer. I will take that. I will overrule the objection.

MR. CONCAGH: All right, fine.

Q Was any approach made to Vanguard Recording Society?

A Was any approach made to Vanguard?

Q Concerning Vanguard's entering into a contract to publish records of John Hurt's music.

A Yes, Mr. Gart said that he had talked to Maynard Solomon and that Maynard Solomon was interested in putting out two records of John Hart. Mr. Gart also had other artists who recorded for Vanguard.

Q What happened after that?

A Mr. Gart and John Hurt and I went to Mr. Solomon's office and had a brief conference.

Q When was this?

A This was probably in November of '65.

Q That is your best recollection as to the time?

A Yes, sir. I explained to Mr. --

MR. NEWMAN: Just a minute.

(Pause)

THE COURT: Excuse me a moment. Do I understand that Mr. Solomon, yourself and Mr. Gart are in this meeting?

THE WITNESS: Yes, sir, and John Hurt.

THE COURT: And John Hurt, all right.

Q Can you describe what happened in this meeting of November, 1975 at the offices of Vanguard?

A It was just that Mr. Solomon wanted to meet Mr. Hurt and it was explained to Mr. Solomon that we wanted a deal for two and only two records and that we wanted a sizable advance and that the contract would have to be signed between Vanguard and Music Research, Inc. but that Herb Gart would be handling the negotiations between the two parties. There was, I believe we asked something like, some sort of flat rate as far as royalties went whereas I think we asked for like a dollar, a flat dollar a record royalty and Mr. Solomon didn't seem to think that that would do, but it was just to meet face-to-face to make sure that each party understood what the other party wanted and that they were in agreement.

Q Was anything said in that meeting concerning the relationship of you to John Hurt or Gart to you or to John Hurt?

A Yes, all that was explained.

THE COURT: No, what was told? Just tell us the substance of what was said at that meeting about this matter.

What did you say, what did Mr. Gart say about this matter?

THE WITNESS: Well, it was explained to Mr. Solomon that Music Research had a contract with John Hurt.

THE COURT: Who told him that?

THE WITNESS: I did and probably Mr. Gart as well and that we explained to him that the contract would have to be between Vanguard Records and Music Research, Inc. because Music Research, Inc. had an exclusive contract with John Hurt.

We explained to him the reasons that we wanted John to be on a major label and that we were willing to give up two records with the hopes that we would make money off of it later by virtue of their wider distribution, publicity, etc.

Mr. Solomon expressed interest and desired having John Hurt on his label because he expressed that he was very fond of John Hurt; that he liked his music very much and he thought that John being on his label would be an asset to him.

Q To your knowledge had there been any negotiations regarding -- with Vanguard by Mr. Gart concerning a contract

with John Hurt?

A Previous to that meeting?

Q Previous to that meeting.

A I think Herb had talked to Mr. Solomon on the phone, you know, and asked him, would you be interested. Mr. Solomon said, "Yes, come on up."

Q Was there any specific document referred to or discussed in this meeting of November, 1965?

A No.

Q Did you have a subsequent meeting with Maynard Solomon concerning the Vanguard contract?

A No, at least not at that time. Mr. Solomon sent a sample contract to Herb Gart at his office and in Herb Gart's office he and I went over the contract and Herb made changes in thecontract. He said, "Look, we don't want this and we'll scratch this out, but we do want this."

We just looked the contract over generally. Herb explained it to me and said that he would sent it back to Maynard to see if it was all right with him.

Q I show you what has been marked as Exhibits 56, 57 and 58, which are all covered by No. 22 in the pretrial order, your Honor, and ask you if any one of these to the best of your recollection was -- whether as marked or prior to that,one of those which you examined in this meeting you

have just referred to?

THE COURT: This is No. 21 we are talking about?

MR. DAVIDSON: 22, your Honor.

THE COURT: All right.

THE COURT: Is there any argument about the genuineness of this paper?

MR. NEWMAN: There is some, I think, as your Honor is aware about these documents.

THE COURT: All right.

A This appears to be --

THE COURT: Which number is this now?

THE WITNESS: No. 57.

Q Go ahead.

A It is very similar to the one that Mr. Gart and I went over. There are places where things are marked out. There are places where other things are added in in pen.

Q The time you and Mr. Gart examined the document, was it signed by anyone?

A No.

MR. NEWMAN: I offer these in evidence, your Honor.

THE COURT: Is there any objection?

MR. CONCAGH: No objection to those, your Honor.

THE COURT: They will be received.

xx (Plaintiff's Exhibits 56, 57 and 58

received in evidence.)

Q Concerning this meeting you described with Mr. Gart, was there any discussion about the number of long-playing record albums which were to be published pursuant to the proposed agreement?

A Yes, the contract was to be for two and only two LP records.

THE COURT: We will take a recess at this time, members of the jury. Withdraw to the jury room and don't discuss the case.

(Recess)

THE COURT: You may resume, Mr. Newman.

MR. NEWMAN: Thank you.

Q Now, Mr. Hoskins, following this meeting with Mr. Gart, which you described before the recess, did you have any further contact with Vanguard or anyone else such as Mr. Gart concerning the recording by Vanguard of John Hurt?

A Well, the contract form that Mr. Gart and I looked over was more or less just a worksheet for us to make changes and suggestions on which Mr. Gart was to send back to Mr. Solomon to see if it met with his approval. If it did, Mr. Solomon was to prepare contracts that included those terms and send them back to me for approval. Either to send them to me in Maryland or to Mr. Gart, who would get them to

me, but it was sent back to Mr. Solomon just so that he could approve the changes incorporated in it and then furnish reprinted contracts to be approved.

MR. CONCAGH: Your Honor, I am going to object to that answer as a totally irrelevant response to the question.

THE COURT: It is. Strike out the answer and the jury will disregard it. It is not responsive to the question.

I am going to have the question reread.

(Question read.)

THE COURT: That is a very simple question. Please answer it. Listen to the questions and answer them. Did you or didn't you, yes or no?

A Yes, mostly is asking Mr. Solomon to send copies of the contract for my approval.

Q Let's take the next thing in time which happened. Were you present at a recording session of Vanguard or under the auspices of Vanguard of John Hurt?

A Yes, I was.

Q Was that the next event that occurred to the best of your recollection?

A I believe so, yes.

Q When was that?

A It was in early February of '66.

Q Where was it?

A It was in a hotel on 2[illegible]d Street. It was Vanguard's designated studios. It was an old hotel lobby.

Q Here in New York?

A Here in New York.

Q Who else was there?

A Mr. Solomon, Mr. Gart, myself, John Hurt, Patrick Sky and various Vanguard recording engineers. There were perhaps one or two other people there, but I can't remember just who they were. Possibly a couple of other people.

Q In the course of this recording session or the time that you were at this place you have just described, did you have any discussions with Mr. Solomon regarding the Vanguard recording contract with Mr. Hurt?

A Yes. I asked him if he had them. He said, "No."

I asked him if he would send them to me and he said yes, he would.

MR. CONCAGH: Judge, I am going to have to object to that as not responsive again. I am trying not to be rude and interrupt.

THE COURT: He is asking whether he had any conversation with Mr. Solomon and he has given us his testimony of what the conversation was. I will allow it this time. Please listen to the question. If you can answer the question

yes or no, do so. If it is simple enough to answer it that way, that is your obligation. If you cannot, then of course you may elaborate. Let's go forward.

Q Did you ever have a conversation either at this meeting at the hotel you just referred to or at any other times with Mr. Solomon concerning the rerecording by Vanguard of Piedmont records and, if so, what was said in that conversation?

A At the hotel?

THE COURT: Anywhere he is asking.

A Anywhere?

THE COURT: Yes or no. You had such a conversation or you didn't.

A Yes.

THE COURT: All right.

Q When was the conversation and what was said?

A I believe the conversation was the first meeting at Mr. Solomon's office and he asked me if on the two records that was part, when I said that I wanted two records and only two records, he asked if it would be all right if on the two Vanguard records if they used songs that had already been recorded on the two previous Piedmont records and I said yes, that it would be all right.

At the recording studio conversation I said that

he could record any song that John had in his repertoire and that I would help him with the repertoire, but there was one song called, "Frankie," that I did not want him to record because I wanted to include it in the next Piedmont album.

Q Was anything said in these conversations that you have just referred to with Mr. Solomon concerning the need to rerecord the Piedmont record material because of its having or being of inferior quality?

A No.

Q Did you ever receive a copy of a contract between Mississippi John Hurt and Vanguard Recording Society?

A Not until after institution of this lawsuit.

Q Did you ever ask Mr. Solomon for it at any time following the meeting in the recording studio in the hotel, which you just described?

A Did I ever ask him?

Q Yes.

A Yes, I did.

Q When did you ask him?

A Several occasions. Once -- both times in his office.

Q Were there any telephone conversations that you had or attempted to have with Mr. Solomon on the subject?

A Yes, I called Mr. Solomon's office a number of

times. I never either found him in or he was busy. I left messages with his secretary saying who I was, what I had called for, namely, with reference to the recording agreement for John Hurt and would he please get back to me.

THE COURT: How many songs were recorded in this session in this hotel that you went to in early February '66?

THE WITNESS: I don't know.

THE COURT: Weren't you there during this?

THE WITNESS: Yes, sir, but I wasn't counting the songs or keeping a log. It was Vanguard's session.

THE COURT: But you were there throughout the session?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Could you give an estimate of the number of songs?

A Say 30, 40 maybe.

Q What was Mr. Solomon's response, if any, when you asked him what the status of the contract was in those conversations you just referred to?

A These conversations occurred, one I believe in April and one in July and both times he indicated that for some reason he was surprised the contracts hadn't been sent out. He thought they had been. He would see to it and get

them together and sent them out.

Q Let's refer to April of 1966. You had a conversation with Mr. Solomon at that time?

A Yes.

Q Was anyone else present?

A It was myself and John Hurt and a person named Dick Waterman. At this time Dick Waterman had been booking --

MR. CONCAGH: Your Honor, I am going to object. He was asked who was present at a meeting and now he is going on about a Dick Waterman.

THE COURT: Please listen carefully to the questions. Just answer the questions.

THE WITNESS: I am sorry, I am trying to.

Q In or about May or June of 1966 where was Mississippi John Hurt?

A About May? In May he was up north. He was living in Mississippi, but he was up here playing some engagements.

Q Thereafter where did he go and when was it?

A Well, I know he was in Philadelphia and possibly here in New York, I think New Haven, around in this general area, the eastern seaboard.

THE COURT: Were you with him on these occasions in these places?

THE WITNESS: Only from time to time. At this point there was another person traveling with him. Sort of only on a trial basis, but I saw him in several places just to see how things were going and if everything was okay.

Q You mentioned a second meeting in the summer of 1966, I believe you said July with Mr. Solomon; is that correct?

A Yes.

Q Where was that?

A It was in Mr. Solomon's office.

Q Who was present?

A Mr. Solomon and myself.

Q Anyone else?

A No.

Q What transpired in that conversation?

A Well, I asked Mr. Solomon had he seen John Hurt because at this time Dick Waterman had taken John Hurt and brought him up here without my knowledge or consent and I had found out about it --

THE COURT: This is what you told Mr. Solomon?

THE WITNESS: No, sir.

THE COURT: All your lawyer asked you to do was to give the Court and the jury the substance of the conversation with Mr. Solomon, not the operation of your mind or

what Mr. Waterman had done. Please just answer the question.

A All right. I asked him if he had John Hurt sign anything.

Mr. Solomon said that John had signed a small piece of paper which had something to do with the union such that John's records could be released.

I asked him if he had signed John to a contract or if any other papers had been signed. He said, no.

I asked him also if he then had the contracts for the agreement between Vanguard and Music Research and he said that he should have them and would have them for me before I left town or he would send them to me.

Q Did you receive any such document from Mr. Solomon?

A No, sir.

MR. NEWMAN: Your Honor, we have an exhibit here which has previously been marked in the pretrial order as No. 60 and marked here for purposes of this trial as Exhibit 9. It is the record album which I am offering in evidence.

THE COURT: I have four record albums as No. 60, four Vanguard albums.

MR. NEWMAN: This is the one labeled "Mississippi John Hurt Today."

THE COURT: All right. It may be received in

in evidence.

xx (Plaintiff's Exhibit 9 received in evidence.)

Q I show you Exhibit 9 --

THE COURT: No, it is in evidence. You don't have to show it to him. Vanguard released it. Nobody disputes that, do they?

MR. NEWMAN: No, your Honor.

THE COURT: Show it to the jury and let's go on with this trial. Don't waste time on undisputed things. Everybody knows that is a record album released by Vanguard.

MR. NEWMAN: I am handing it to the jury but I want to ask a question about it.

THE COURT: Ask it.

Q To the best of your knowledge when did that record that we are talking about come out?

A Sometime in 1966.

THE COURT: Isn't the date of this a matter of record that can be admitted to? When did it come out?

MR. NEWMAN: I think the defendant should be able to give that to us.

THE COURT: When did that come out?

MR. CONCAGH: I will have to check with my client, Judge.

THE COURT: Go ask him. You ought to know that by

now when that was released.

MR. CONCAGH: Judge, it was August or September of 1966 that it was released.

THE COURT: Do you agree with that, Mr. Newman?

MR. NEWMAN: I have no reason to dispute it, your Honor.

THE COURT: All right, it is so stipulated, members of the jury. That is when this record that you just saw was released. Please go forward.

Q Mr. Hoskins, when that record, Exhibit 9, came out did you take any action or do anything?

A When that record came out?

Q Yes.

A No.

Q Why was that?

A Well, first of all, I am not aware of when I became aware that it was released.

THE COURT: Didn't you just start to tell us when it came out?

THE WITNESS: No, sir, I did not.

MR. NEWMAN: I believe the witness was trying --

THE COURT: I thought you were going to ask him when it came out. You can finish your answer. Let's go forward.

Q When did you become aware of the existence of this record?

A I am not sure. I may have been as late as after the time that John Hurt died. I do not remember specifically when I became aware that the record had been released. I was not provided a copy from Vanguard.

Q I asked you before what was the reason why you took no action with respect to it?

MR. CONCAGH: Your Honor, I am going to object to this line of inquiry.

THE COURT: Sustained.

MR. NEWMAN: Your Honor, there is another record which is part of the same exhibit.

THE COURT: Offer it in evidence and let's get a stipulation of when it was released.

MR. NEWMAN: That is No. 10 on our system.

MR. CONCAGH: Approximately September of 1967, the second album was released.

MR. NEWMAN: I have no reason to dispute it, your Honor.

THE COURT: All right, so stipulated.

xx (Plaintiff's Exhibit 10 received in evidence.)

MR. NEWMAN: May I simply state for the record that this record is called, "The Immortal Mississippi John

Hurt."

THE COURT: Yes.

MR. NEWMAN: I would like to hand that to the jury.

THE COURT: Yes.

Q When did you become aware of the publication of this record, Mr. Hoskins?

A I don't recall exactly.

Q Did you receive a copy of the record from Vanguard?

A No, I did not.

Q I direct your attention to in or about 1970. Did you enter into an agreement with Mr. Eugene Rosenthal at that time in that year?

A Yes.

THE COURT: June 8, 1970. Offer it in evidence.

MR. NEWMAN: Exhibit 11, which is pretrial order No. --

THE COURT: Paragraph 4 of the undisputed facts. It is received in evidence.

xx (Plaintiff's Exhibit 11 received in evidence.)

Q How did you happen to enter into this agreement which has been marked as Exhibit 11, the agreement between you and, or rather Music Research and Adelphi Studios dated June 8, 1970?

THE COURT: Does it matter? They wanted to enter

into it and so did he, so they went and did it. Is that right? Mr. Newman, is that right?

MR. NEWMAN: I assume it was voluntarily entered into.

THE COURT: I would certainly think so. Let's go on to something that is not disputed. He wanted to sign it and Adelphi wanted to sign it so they signed it.

Q Was this part of any kind of joint venture on your part with Mr. Rosenthal?

A Yes, sir. This was to exploit the recorded material in our "vaults," these 25 hours of John Hurt's recorded music.

THE COURT: That was the purpose of this agreement?

THE WITNESS: Yes, sir. To make a double LP record of John Hurt, a memorial anthology.

Q Would you tell the jury what the nature of this memorial anthology was to be, what was to be its content?

A It was to be a really definitive John Hurt record. That is, it would include extensive notes about the kind of music he played, where he came from, notes on how if someone wanted to learn how to play like John Hurt they could do it, it would be instructional. It would also include interview material, story telling, things like that. It was designed to really display the talents and personality of John Hurt

as best we could do it.

Q Did you and Mr. Rosenthal plan subsequent record albums of John Hurt music?

A Yes, sir.

Q Approximately how many?

A Three or four.

Q Did you take any steps to put together or do whatever has to be done to produce the memorial record album you referred to?

A Yes, sir.

Q What did you do?

A Well, we catalogued, listened to, graded all of the tapes, assembled pictures, notes, all the things necessary to go into production on it.

MR. NEWMAN: Your Honor, I have another record which is also part of 22.

THE COURT: All right.

MR. NEWMAN: Which is numbered 12 and this is a double record.

THE COURT: A Vanguard record?

MR. NEWMAN: Another Vanguard record, a two-record set labeled, "The Best of Mississippi John Hurt."

THE COURT: Received in evidence.

xx (Plaintiff's Exhibit 12 received in evidence.)

MR. NEWMAN: I think if we could have a date from Mr. Solomon?

MR. CONCAGH: April of '71, your Honor.

THE COURT: So stipulated that this was released in April of '71.

MR. NEWMAN: I am handing it to the jury, your Honor.

THE COURT: Yes.

Q Mr. Hoskins, when did you become aware of the existence of this "Best of John Hurt" double record album?

A Not long after its release.

THE COURT: How long?

THE WITNESS: I might be able to refresh my memory from a letter from my attorney to Vanguard would be the best way I could pinpoint it. I don't recall the date offhand.

MR. NEWMAN: I will try and help you.

Q I show you a document which is marked as 68 for identification and ask you if that refreshes your recollection?

A Yes. This says March 30, 1971.

THE COURT: That is the day you first learned about the last exhibit?

THE WITNESS: It was within probably a week of the time.

Q What did you do, if anything, upon hearing of this

"Best of Mississippi John Hurt" album?

A I had my attorney, Mr. Powell, write that letter to Mr. Solomon.

Q You are referring to --

MR. NEWMAN: This is Exhibit 68 for identification, your Honor, which is in the pretrial order as No. 43 and I offer it.

MR. CONCAGH: No objection.

THE COURT: All right, it will be received in evidence.

xx (Plaintiff's Exhibit 68 received in evidence.)

THE COURT: May I see it, please.

MR. NEWMAN: May I hand it to the jury?

THE COURT: Well, all right.

MR. NEWMAN: Your Honor, Exhibit 14, which is also part of 22, another record headed, "Last Sessions, Mississippi John Hurt," and I offer this.

MR. CONCAGH: February of '72, your Honor.

THE COURT: Thank you.

MR. NEWMAN: Thank you.

xx (Plaintiff's Exhibit 14 received in evidence.)

MR. NEWMAN: I am handing this to the jury as well, your Honor.

THE COURT: Very well.

Q You heard counsel for Mr. Solomon state that in February, 1972, this record was released. When was it that you became aware of its existence?

A Sometime after that. I don't know just when.

Q Did you do anything with respect to this fourth album after hearing about it, did you take any action?

A Well, I had already had Mr. Powell write a letter to Mr. Solomon.

THE COURT: That we all know. Please just answer the lawyer's question.

A Yes, it was brought to my lawyer's attention.

Q Now, you mentioned earlier that you were working on the memorial anthology album. After the fourth record album which the jury has, I believe, did work continue on that memorial anthology album?

A No, sir.

Q Why not?

A Well, with the issuance of those two records, the market for our record was essentially spoiled and saturated with these last two Vanguard releases, especially the third album that they released, the double, "The Best of John Hurt," which was a double LP album, just like we were going to bring out, except that Mr. Solomon was selling his for $5.98 for a double and our's was to be a more expensive package for

$9.95, so that a record buyer when offered a choice of two records for $5.98 or two records for $9.98 would probably pick the $5.98 item.

Q The double --

A Which destroyed our market.

Q What about the content of the third and fourth releases, "The Best of" double album, and "The Last Sessions" single album? How did they relate to the content of your proposed memorial anthology album?

A Well, they were totally different in concept from the outside. "The Best of" being just a live recording of a concert and "The Last Sessions" album is mostly just little short pieces and out-takes, the stuff that they had left over after putting out their first two records.

Q What about the songs that were included in these last two albums, how did they relate to the songs you intended to put into your memorial anthology album and the other album that you proposed to issue subsequent to that?

A Most of them were used.

Q I beg your pardon?

A Most of them were used in those three records.

Q Most of the songs you intended to use?

A Yes. It covered a good bit of our material.

Q I show you a document which is marked by us as

15 for identification and 31 in the pretrial order. I note that it is addressed to you and ask you, did you receive that?

THE COURT: Isn't it stipulated that he did in the pretrial order? That all these letters were mailed on or about the dates they bear and were received. No argument about that.

MR. NEWMAN: I am really trying to direct his attention.

THE COURT: Don't direct his attention to something we have all agreed upon. If you want to offer the letter and it is relevant, it will be received. Offer the letter in evidence.

MR. NEWMAN: I am not offering it at this point.

Q I am asking him what he did, if anything, after receiving this letter?

First of all, about when did you receive it so we have a feeling of when this took place?

A Sometime after June 10, 1966, which is the date of the letter. I was in North Carolina at the time. The letter was sent to my Annapolis, Maryland post office box and Mr. Leland Talbott, secretary of Music Research, either opened the letter and read it to me on the phone long distance or he mailed it to me in North Carolina. I don't remember exactly when and where I saw it for the first time, but the

time would be, say, within a week or ten days after the date of the letter, which is June 10, '66.

Q The question was, what did you do, if anything, after having received at your Annapolis post office address this letter?

A Well, I had Mr. Talbott write a letter to Mr. Ross and I also called John Hurt. This is a letter from a New York attorney saying that John Hurt has retained him to break the Music Research contract and that it is in fact broken.

I called John and asked him had he been to an attorney in New York and did he indeed wish to break the contract. He said no. He said that he had contacted no attorney and he was perfectly happy with our contract.

Q What else did you do, if anything?

A Well, after I got back to Annapolis, it was right during that time, I had Mr. Talbott call Mr. Ross on the phone and ask him if he had any documents or any proof of what he said in the letter, would he just send it on to the same address.

Q Were you present when Mr. Talbott made the phone call?

A Yes, I was.

Q And what happened?

A Nothing happened. We never heard from him again.

Q What happened in the phone call?

A Mr. Talbott was talking on the phone and I was listening right beside him.

He told Mr. Ross that John Hurt did not know who he was; that he had no wish to break the Music Research contract and that if Mr. Ross had any evidence to the contrary, that he should send it to us; otherwise we would totally disregard this letter. We never heard from him.

MR. CONCAGH: I am going to object to this, your Honor, unless there is some foundation.

THE COURT: I will take it subject to connection. As far as I see there is nothing in the record that connects Mr. Ross with your client.

At the present time at least. I will take it subject to a motion to strike.

MR. CONCAGH: I am speaking about the phone conversation, your Honor.

THE COURT: Well, all right. That is my ruling. The testimony about a phone conversation he overheard between his man and Mr. Ross is not admissible in this case unless it is connected in some way with either Mr. Gart or his company or the Vanguard company.

MR. CONCAGH: Your Honor, that we don't dispute.

I will withdraw any objection if the Court took my objection as that.

Now regarding Mr. Ross and Vanguard. My objection was this witness is testifying to a phone conversation he never participated in.

THE COURT: He told us he overheard it.

MR. CONCAGH: Could I have a voir dire on that?

THE COURT: Yes, certainly.

VOIR DIRE EXAMINATION

BY MR. CONCAGH:

Q Mr. Hoskins, did you speak to Mr. Ross on that day?

A No, I didn't speak to him.

Q On the telephone. Forgive me, I will just ask you if you would please just answer the question whether you spoke to Mr. Ross during the course of that phone conversation?

A No, sir.

MR. CONCAGH: Thank you.

THE COURT: Did you listen yourself to the voice of the person on the other end of the phone?

THE WITNESS: Part of it, yes, sir.

THE COURT: Which part?

THE WITNESS: Well, not very much of it really.

THE COURT: Any of it? What did you hear?

THE WITNESS: Nothing that I can really, just that

there was somebody else.

THE COURT: I will sustain the objection. I will strike out all this testimony about this phone call and the jury will disregard it. Let's go forward.

MR. NEWMAN: Your Honor, I submit --

THE COURT: He heard nothing and he cannot testify.

MR. NEWMAN: He heard one side of the conversation.

THE COURT: That does not tell what the fellow on the other side said, does it?

MR. NEWMAN: No.

THE COURT: I will sustain the objection. I am striking out the testimony about the side of the conversation he heard. He may be permitted to state that he had his man telephone Mr. Ross. That much will be admitted in evidence.

MR. NEWMAN: Your Honor, may the testimony be to the effect that there was a denial as to the validity of this letter.

THE COURT: Not binding on these defendants, although Mr. Concagh said he doesn't raise his objection on that ground. That is what I don't understand.

MR. CONCAGH: Not on that ground. Is Ross connected with your client?

MR. CONCAGH: Yes.

THE COURT: Then the evidence may stand that this

witness observed his secretary call Mr. Ross and he may give the side of the conversation that he heard.

BY MR. NEWMAN:

Q Would you --

THE COURT: Just what you heard. Not what you did not hear.

MR. NEWMAN: Of course, your Honor.

Q Could you describe, I don't want you to repeat what you have said before, but beyond what you have said, was there anything else that you can recall that was said by Mr. Talbott in his side of the conversation to Mr. Ross?

THE COURT: I think he ought to give the entire side of Mr. Talbott's conversation which I understand is all that you heard; is that right?

THE WITNESS: Yes. I did hear enough to know that there was somebody on the other end of the line.

THE COURT: Tell what you heard Mr. Talbott say to the other end of the wire?

MR. CONCAGH: The attorney hasn't established with this witness that the witness knew Mr. Ross was on the other side of the phone.

THE COURT: No, he hasn't, but he has testified that he had a letter.

He has testified that he directed his secretary to call the person whose name appeared on that letterhead.

MR. CONCAGH: Yes, sir.

THE COURT: I suppose if you examine him in depth you will find that there is a phone number on the letterhead and I will take it on that basis and you can cross examine him. If you show that he did not, in fact, call Mr. Ross, well then of course the jury cannot rely on that.

All right, Mr. Talbott's side of the conversation, heard by you.

A He told Mr. Ross that John Hurt was under exclusive contract to Music Research, Inc. That John Hurt had not retained him to break this contract. In fact, he did not even know who Sanford Foss was and that he was not dissatisfied with Music Research's contract, did not wish to break it and that if Mr. Ross had any evidence at all to the contrary that he should send it to us and/or to our attorney.

Q Is that all you recall?

A Essentially, yes, sir.

Q What happened to the value, if anything, what if anything happened to the value of Music Research's library or vault material after the publication of the fourth Vanguard recording?

MR. CONCAGH: I am going to object, your Honor. The witness isn't qualified.

THE COURT: I will permit him to state his opinion

as to what happened to it.

A The value of the material that we have recorded and intend to issue has been drastically reduced because other versions of this same material have been on the open market in the form of Vanguard records for some five years now. Five years in the case or four years in the case of "The Best of" and "The Last Sessions."

In other words, a great deal of the material we intended to issue, they have already issued. People that wanted that material have already bought it.

Q Are you saying that the value is drastically reduced? Drastically reduced from what to what?

MR. CONCAGH: I further object on the record to the witness' qualifications.

THE COURT: I will permit him to testify with respect to the subject to cross examination.

A Well, it has been reduced from the value of being able to produce five records and sell them to the value of being not able to produce them because of the competition of the Vanguard records, which are already out.

Q After the publication of the third and fourth John Hurt record albums, what happened, if anything, to the sales of Piedmont recordings of John Hurt material?

A They have remained fairly constant for all the

time they have been on the market. They have a certain catalogue life. They are the kind of records that will sell a certain amount for year after year because they are records of continuing interest as opposed to a pop fad that sells a million copies: everybody buys it and then a year later everybody forgets about it and they are off on some other new music trend. But the music of John Hurt is a music of continuing interest.

MR. NEWMAN: May I have just one moment, your Honor?

I have no further questions at this time, your Honor.

THE COURT: Mr. Concagh, you may cross examine.

MR. CONCAGH: Yes, your Honor, I have a few questions if I may.

CROSS EXAMINATION

BY MR. CONCAGH:

Q Mr. Hoskins, I believe you testified --

THE COURT: No, none of those questions. Just ask him a question, a direct question.

Q Mr. Hoskins, you testified on your direct testimony --

THE COURT: No, sir, I will not accept that type of cross examination in this court. Ask him a direct question.

Q Would you tell the Court and the jury what you meant when you said Herb Gart was to negotiate the deal with Vanguard Records?

A He was to act as a go-between between myself and Mr. Solomon. He was to negotiate the terms of the contract.

Q Was he in any way associated with you at the time?

A He was associated with me only in that he arranged bookings for Mississippi John Hurt.

Q Was the Vanguard agreement that you mentioned you discussed with Mr. Solomon a booking agreement?

A No.

Q Then is it true that Mr. Gart negotiated things other than booking agreements for Music Research?

A He did negotiate the agreement between Vanguard Records and Music Research, Inc., yes.

Q You saw a written agreement pursuant to those negotiations; is that correct, sir?

A I saw a sample contract that was sent more or less as a worksheet.

Q Those are your words, aren't they, Mr. Hoskins?

A Yes.

Q Mr. Solomon didn't call them a worksheet, did he?

A A sample contract.

Q These are your words that you are using, isn't that correct?

MR. NEWMAN: May we have the witness' attention directed to a particular conversation.

THE COURT: This is cross examination and he may be permitted to inquire.

Q At any time. You correct me if I am wrong, Mr. Hoskins, you are speaking about a sample contract. You are saying it was a sample contract and you are using your own words; is that correct, sir?

A Yes, they are my words, but it was not a contract to be executed.

THE COURT: Are you saying that this was a marked-up draft of a contract, is that what you consider it to be?

THE WITNESS: It was a printed form, a standard form contract that was sent to Mr. Gart for us to ink changes -- it was not a document to be executed. It was for us to put in what we wanted. It was a standard Vanguard form and it was to be sent back to Mr. Solomon and he could make what changes he wanted and then send it back for our approval.

Q Mr. Hoskins, I am going to show you the Exhibits 57, 58, 56, which have been admitted into evidence as Plaintiffs' Exhibits 7 and 8, if you would.

MR. NEWMAN: I think they are in evidence as 56, 57 and 58.

Q I am going to ask you, Mr. Hoskins, if you and Mr. Gart didn't review that agreement word-by-word and line-by-line?

A Which one?

Q Are they one and the same?

MR. NEWMAN: Your Honor, these speak for themselves.

THE COURT: He may be asked if he considers them one and the same.

A They appear to be, yes.

Q Which one is the one that you saw? You pick it out, if you would.

A I am not sure that I could. I am not even sure that any of these is indeed the one I saw.

Q You testified, didn't you, under your direct testimony that you did see the document when it was introduced in evidence?

A I saw a document.

Q It was similar to that, didn't you say that?

A It was similar to these, but I don't krow if it was, in fact, any particular one of these. It was similar, yes.

Q Tell me what the difference was between the document

you saw and the one your lawyer presented to you on direct examination that is before you now?

A It would be hard to say what the difference is. This one, for instance, it has 32 --

Q I am not asking you the difference among each one of them. You identified one of those documents, did you not, as the one that you and Mr. Gart went over?

MR. NEWMAN: That is not correct, your Honor.

THE COURT: The jury will recall. The witness can answer whether he identified one of these as the contract he went over.

A It was one similar.

Q How did it differ?

A I am not sure what you are asking.

Q It is a very simple question --

THE COURT: Don't make speeches of that sort. The jury will decide whether it is a simple question or not. Just put another question.

Q Can you answer that question?

A Would you restate it?

Q Yes. Could you tell us now how the document that you and Mr. Gart reviewed line-by-line and word-by-word differed from the documents before you now?

A Yes. These are signed and initiale boxes are

placed and initials have been initialed on.

On the contract that Mr. Gart and I went over there were no signatures and there were no initial boxes.

Q Was there anything else different?

A Possibly.

Q Do you remember whether anything else was different?

A I remember here where there is scratched out --

Q Would you tell the Court what document you are referring to?

A This is 57 and this is 58. On this one it says, "shall record two LP." The next word is "record" and "signed" has been scratched out and "S" behind "records" to make it plural has been put in. It says "two LP records."

On this one it says --

Q No, sir, I am not asking you --

A It says "two LP records" in pen and then comes down and says "record" again. That is a difference that I remember.

Q I am not quarreling with you, Mr. Hoskins. I am asking you to tell the jury if you can how the document that you and Mr. Gart went over word-by-word and line-by-line differed in any way from the documents you have before you. I am not asking you to compare the documents before you which are in evidence. The jury can do that.

A Well, aside from the initial boxes and the signatures, to the best of my recollection in the second paragraph it was printed in "two and only two LP records," by Mr. Gart.

Q When you say it was printed in, was it typed in or was that in pencil?

A Printed in in hand. Mr. Gart scratched out the printed part where it says, "Minimum of 32, 45 or 78 rpm records." That is printed. I recall him scratching all of that out and on the draft, the sample contract that we went over he scratched out and put in "two and only two LP records."

Q Did you have a conversation with Mr. Gart about that?

A Yes.

Q Tell us what that conversation was.

A Just that that is what the contract was to be for, was for two records and only two records.

THE COURT: When you finish with the conversation, I will break for the day.

MR. CONCAGH: I follow you, your Honor. I was going to end on that.

THE COURT: While it is fresh in everybody's mind, you may continue with the conversation. With that, we will

break.

Q Did you have anything further to say to Mr. Gart about that modification you are speaking of now other than what you have told us?

A Well, we discussed it and he agreed that that would be what the contract would say and it was agreed. It was understood.

Q Did you actually watch Mr. Gart make that physical change?

A Yes, sir.

Q Do you remember where you were when he made that physical change?

A Yes, sir.

Q Where were you?

A In Mr. Gart's office on East 54th Street on the desk in his front office.

Q Just so we have it clear. Was there anything further said by you or Mr. Gart regarding that change we are talking about?

A It was a settled point. You know --

THE COURT: He asked a very simple question. Was there anything further said. You can answer that question by saying yes, there was something further said and it was thus and thus or by answering it, no.

A No, not that I remember.

MR. CONCAGH: I have no further questions along that line.

THE COURT: Members of the jury, please reassemble in the jury room at 10:15 tomorrow morning.

Do not discuss the case. Keep an open mind. You may withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: Just so that I can be fully informed on the schedule, how much more cross examination do you anticipate, Mr. Concagh?

MR. CONCAGH: A good hour and a half, Judge.

THE COURT: I don't think so. If he answers a little more succinctly than today, I think you will do it in less time than that.

MR. CONCAGH: That is my problem. You can see it at the end of his testimony.

THE COURT: I hope that he will listen to questions tomorrow and answer them directly. I will attempt to try to get him to do that and I think that is too long, but we will see how it goes.

I ask you, Mr. Newman, to be sure you have enough witnesses tomorrow so you don't run out. I am not going to listen to an hour and a half of this fellow on cross

examination, absolutely not.

MR. NEWMAN: In that connection I might say that we will put on Mr. Rosenthal next.

THE COURT: Don't run out of witnesses. If you do, you are resting.

MR. NEWMAN: May I also say, your Honor, that we would like to be able, if we can, physically make the arrangements to put on the approximately six recordings, two of Piedmont, two Vanguard and two from the Music Research vaults just after the testimony of Mr. Rosenthal.

THE COURT: I do not think so. I want to get these live witnesses on here. I am going to go forward. That has been extremely slow today and part of it is due to a great lapse of time in framing questions, a slowness on the part of the witness in answering and a failure to give short, concise responsive answers.

I must tell you that when a litigant does that, he just lays himself open on cross examination. You are all experienced attorneys and you know that so let's get with it here.

What is it about Mercury Records?

MR. VASSALLO: Your Honor, may we approach the bench on that out of the hearing of the witness.

I think at this stage that might be appropriate.

(At the side bar.)

MR. VASSALLO: Prior testimony at deposition and I think further cross will show was that the first attempt made to negotiate a major record contract was with Mercury. This man specifically approved a fourth album deal at Mercury.

THE COURT: I can't see any possible basis for taking that. Mercury never entered into it.

MR. CONCAGH: It goes to his apparent authority.

MR. VASSALLO: He said he authorized Gart to make only a two-record deal. Gart --

THE COURT: With Vanguard.

MR. VASSALLO: His testimony, your Honor, albeit we are in the position of anticipating by dint of the depositions given b6 the witness and what I expect will be brought out further on cross, the man testified differently at deposition. He testified to a continuance between the Mercury and Vanguard deals.

THE COURT: It may be premature.

MR. VASSALLO: He claims under no circumstance would he allow more than two LP's.

THE COURT: It may be premature and I cannot make a definitive ruling now. Unless it takes a different thread, I think whatever authority he granted with respect to Mercury

is not evidence with what his authority was with respect to Vanguard, but I will leave it open for you.

We will be in recess until tomorrow.

MR. CONCAGH: May I ask that the witnesses under cross examination not have conversations with their lawyers.

THE COURT: I decline to so direct. However, if they do have any such conversations, they may be cross examined as to what conversations they had since we broke at 5 o'clock today and I would also say that I hope that Mr. Newman would have a conversation with him because his testimony is not coming through the way a well-prepared witness would testify. It doesn't relate to his credibility. I am talking about his responsiveness, his listening to the questions and answering them.

MR. NEWMAN: Your Honor, I do the best I can with the tools I have.

THE COURT: All right, it seems to me the man is not stupid and there is no reason why he cannot be told to listen to the questions and answer them and don't volunteer a lot of material. Good evening.

MR. NEWMAN: Your Honor, may I bring up one point.

THE COURT: Can't it wait until tomorrow?

MR. NEWMAN: I did hear it stated that there was going to be an expert witness called to testify as to the

law. We will be here forever if we get into such a thing.

THE COURT: I will cross that bridge when I come to it.

(Adjourned to October 23, 1975 at 10:15 o'clock, a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Thomas Byrd Hoskins	45	121		

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Plaintiff	Identification	In Evidence
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TRANSCRIPT OF PROCEEDINGS BEFORE BRIEANT, D.J. DATED OCTOBER 23, 1975

MUSIC RESEARCH, INC., et al.

vs.

VANGUARD RECORDING SOCIETY, INC., 73 Civ. 394

vs.

HERB GART d/b/a/ HERB GART MANAGEMENT, INC.

October 23, 1975
10:15 a.m.

- - -

(In open court - jury not present.)

THE COURT: Before I bring in the jury, I would like to take up a couple of matters with you very briefly.

Number one, as far as the scope of cross examination is concerned, I can understand that the issue of the agency of Mr. Gart is in issue and certainly this witness may be cross examined within reason as to any relevant discussions he had or anything connected with the plaintiff in his presence had with Mr. Gart or anyone connected with Mr. Gart's organization.

As far as independent matters which he himself conducted with Mercury Records, that I would not take in the absence of a special showing.

There is one other matter I would like to take up with you. Would you look at your pretrial order, please? I would like particularly to inquire where in that pretrial

order this issue of unconscionability of the initial Hurt contract is set forth as anybody's contention. That was raised in the opening.

MR. CONCAGH: Yes, your Honor, it was raised in the pleadings of the cases and the answer.

THE COURT: I don't care about that. Show me in the pretrial order.

MR. CONCAGH: Your Honor, paragraph J on page 23 of the pretrial order among the issues.

THE COURT: You see, I had been looking for it earlier in the front of the order under paragraph 3C, defendants' contentions as to liability and damage. Was this discussed with Magistrate Hartenstein?

MR. CONCAGH: Yes, it was, your Honor.

THE COURT: Because I'm inclined not to take anything on the unconscionability. I have the view that the contract whose performance it is claimed Vanguard tortiously interfered with, if it was unconscionable and I am assuming for purposes of this discussion it was, certainly under New York law an unconscionable contract is not void. It is voidable and only at the option of the party who has been overreached or imposed upon by the terms or operation of the unconscionable contract.

In this case John Hurt and I consider it is

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accepted learning in the law of business torts or in the law of unjust competition or tortious interference with the contractual relationships that the existence of some contractual defect, which would render the contract voidable, is not a defensen to that sort of claim. That position seems to be borne out in Pressor's Law of Torts and Kalman's book on unfair competition and I also take note of Justice Stoyer's decision widely relied upon by the New York courts in Union Circulation against Hard Dell Publishers, which is in 6 Misc. 2nd, page 340, but it is well quoted in other subsequent cases.

It says that unconscionability of a contract was not a defense to the suit in tort for intereference with the contract.

I distinguish that type of case from contracts which are void for restraint of trade because a contract in restraint of trade is void under New York law as a matter of public policy.

I suggest to all of you that this contention in sub-paragraph J at page 23 of the pretrial order is insufficient in law clearly .

MR. CONCAGH: Well, I agree with most everything your Honor said with the exception of your last statement. I agree that the party taken advantage of by the

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unconscionable contract has to do something to rescind it. It is an issue in this case and indeed a letter has been marked in the pretrial order from a New York attorney, Sanford Ross. There was testimony to the effect that that letter was received by Mr. Hoskins yesterday.

THE COURT: I understand that, but implied in what I have heard so far is a contention on the part of the plaintiff that the sending of that letter was in some way induced in whole or in part by tortious contract of Vanguard or its principals.

Vanguard induced Mr. Hurt to break or rescind or repudiate, if you will, this allegedly unconscionable agreement and that is actionable in New York because it is a voidable contract.

MR. CONCAGH: Yes, and our position quite clearly is, your Honor, that the principal, Mississippi John Hurt, who is a party to that contract which we claim was unconscionable, had an attorney write a letter, dated June, 1966, which rescinded the contract.

THE COURT: But was he induced in any way by Vanguard to take that step?

MR. CONCAGH: No, sir.

THE COURT: That is an issue in this case.

MR. NEWMAN: It is our contention that he was,

your Honor.

THE COURT: That is a factual issue in this case, but no more about the unconscionability. That is not a valid or available affirmative defense to these defendants here, Vanguard.

MR. CONCAGH: Your Honor, if the trier of fact should find that Mississippi John Hurt did indeed rescind his contract with Music Research, the issue of fact would allow for the finding that the contract was indeed rescinded by the party to it.

THE COURT: It wouldn't matter if he rescinded it. That is not the issue we are trying. I am assuming for purposes of this discussion that he did rescind it. He certainly repudiated it the day he ~~began to~~ service your client becuase he couldn't under these circumstances have these contracts perform his contract with the plaintiff Music Research and be in good standing under that agreement and still perform what he was doing for your client. I don't think there is any question that there may have been a repudiation, but the issue we are trying is whether the tort of interference with contractual relationships was committed by Vanguard as against Music Research in that they induced Hurt to void is voidable contract, if you want to put it in those terms.

MR. CONCAGH: Your Honor, if I may, I feel the issues do include what I have just mentioned, but they also include the fact that our contention is that Music Research entered into a contract with Vanguard through its agent.

THE COURT: That's a different case, isn't it?

MR. CONCAGH: That is a different issue.

THE COURT: I'm talking about this claim of unconscionability which was made in the opening statements and I am trying to indicate to you that I consider that insufficient in law and I don't propose to have any more of it in this trial. I am making a ruling on the record in the absence of some showing by you that I'm wrong in this respect.

MR. CONCAGH: Your Honor, you have suggested that it is an issue of fact, whether the contract was repudiated by the party to it, Mississippi John Hurt.

THE COURT: I am assuming that that fact isn't seriously disputed because the minute he did what he did for Vanguard, he repudiated his contract with Music Research. Isn't that so?

MR. CONCAGH: Then I will take a stipulation on that.

THE COURT: Are you prepared to stipulate that?

MR. NEWMAN: I will stipulate that he played music for Vanguard and carried out the terms of the agreement.

Everybody knows that he did in fact record for Vanguard.

THE COURT: In so doing Hurt was in breach of his contract with your client, Music Research, isn't that so?

MR. NEWMAN: That's correct, your Honor, yes.

THE COURT: Aren't you bringing a suit here on a claim of tortious intereference with contractual rights? That's what I understood I was trying.

MR. NEWMAN: That is one of our claims, yes, sir.

THE COURT: It is no defense to that claim that the contract that was interfered with was voidable at the instance of Hurt for unconscionability.

MR. CONCAGH: Your Honor, I have no quarrel with you whatsoever if I can get a stipulation that Mississippi John Hurt repudiated the contract.

THE COURT: He has practically given you that, but what's the difference? What difference does it make?

A claim is either a valid affirmative defense in law or it is not. I am suggesting to you it is not. You apparently agree it is not.

MR. CONCAGH: I am suggesting, your Honor, that if the issue regarding Mississippi John Hurt's repudiation of the contract with Music Research is conceded, I will say nothing further about it.

THE COURT: That is a different point. I am

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talking about the issue of unconscionability which you raised in your opening statement and which is contained in subparagraph J at page 23 of the pretrial order.

I take the view, subject to being shown that I am wrong, that unconscionability is not an issue in this case and unconscionability is not a defense to the tortious interference with the contract.

MR. CONCAGH: I concede and I agree with your Honor on that point. I am saying, your Honor, that intricately related to this issue is the issue of whether Mississippi John Hurt did in fact repudiate his contract.

THE COURT: If he repudiated it, I don't think it makes any difference whether it was unconscionable or the greatest thing in the world.

MR. CONCAGH: Exactly, sir.

If they are willing to stipulate to that, I would have no objection to your Honor's ruling. Otherwise I will have to prepare a memorandum.

MR. POWELL: We will not stipulate that --

THE COURT: Let Mr. Powell be heard.

MR. POWELL: We cannot stipulate that Mississippi John Hurt repudiated the contract, because his performance, it wasn't a performance, is allowing himself to be recorded by Vanguard was in his mind under Music Research's agreement

with Vanguard that he might do so for a limited time.

THE COURT: Didn't he then go make the rounds in the custody of one of their employees?

MR. POWELL: No, sir.

THE COURT: Weren't we told yesterday that Mr. Waterman --

MR. POWELL: He was not connected with Vanguard in any way.

THE COURT: Who was he working for?

MR. POWELL: Independently as a booking agent.

THE COURT: Employed by whom?

MR. POWELL: Employed by himself and he simply wanted to take over John Hurt for himself and take him around to performances and so forth, but he had no connection with Vanguard at all.

THE COURT: Isn't the Waterman activity, it was implicit in Mr. Hoskins' testimony as I heard it, isn't the Waterman activity consistent on Hurt's part with performance? Isn't it a breach?

MR. POWELL: No, we don't feel so because Waterman admittedly to Vanguard exercised dominion over John Hurt only on his theory that Music Research's contract with John Hurt was unconscionable and therefore void.

THE COURT: It isn't void, it is only voidable. The minute Hurt conducted himself in the fashion which

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constitutes a breach, that might be regarded as a repudiation of his obligations to Music Research on the part of Hurt.

All I'm saying is that I don't consider myself required to take any proof as to unconscionability. I decline to do so. I am now ruling that as a matter of law and in the circumstances of this case, it is not a defense in whole or in part to plaintiffs' claims against defendant Vanguard.

MR. POWELL: Your Honor, if I may make one point on that.

The conflict of laws probably would dictate that thelaw of the District of Columbia would dictate that issue.

THE COURT: I'm assuming for purposes of making my ruling that the contract was unconscionable.

The place of the tort is New York.

MR. POWELL: The law in D.C. is the same.

THE COURT: If it is the same, then we have no choice of law problem. I am assuming in making that ruling that this contract with Music Research was unconscionable and that it was voidable at the instance of Hurt but not at the instance of plaintiff.

MR. NEWMAN: Your Honor, I assume that assumption was made solely for purposes of that ruling.

THE COURT: Yes, of course.

You see, I am not going to try unconscionability

in this lawsuit.

MR. NEWMAN: I appreciate that. I think that also carries through to this expert, Mr. Krasilovsky who is supposed to testify according to the opening statement by Mr. Concagh as to unconscionabliity.

THE COURT: I am telling Mr. Concagh that the affirmative defense has no validity and I decline to take any evidence in support of it.

MR. CONCAGH: Your Honor, I must press that it was raised by your Honor and it was put to the plaintiff in this case whether they would concede to the fact that Mississippi John Hurt did in fact by his activities, by the testimony, if you will of Mr. Hoskins yesterday, repudiated it.

THE COURT: I don't know how they can claim that he didn't, but that may be a jury question. I don't think any of you should assume this jury is stupid.

MR. CONCAGH: Your Honor, if you're going to allow that issue to remain in this case and I don't feel it should, I think your Honor agreed with my prior in your discussions this morning, if that issue is going to remain in this case, I will have to press and ask that I be allowed to submit a memo --

THE COURT: I decline to take it. I am making a firm ruling now and you have an exception. The jury can

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decide whether Hurt breached his obligations to Music Research.

On what I have heard so far it is obvious. He is running around the country working with Waterman which is inconsistent with his obligations to Music Research and apparently the jury could infer that he was rendering services to Vanguard which unless he was acting under a mistake of fact, was also inconsistent.

MR. CONCAGH: Your Honor, I further press my point respecting the point of the pleadings in this case.

THE COURT: I don't care about the pleadings. This case is being tried on the pretrial orders.

MR. CONCAGH: I am speaking about the plaintiffs' complaint.

THE COURT: I am note even going to read the complaints in this case. I am trying this case on a pretrial order which has been submitted to me of some twenty-five pages signed by all the attorneys in this matter generated by Magistrate Hartenstein after what appears to me to be considerable work and service on his part and approved by this Court with everybody's consent and approval on May 23, 1975. That is the case we are trying here. That takes the place of whatever you got in these third amended complaints.

MR. CONCAGH: Your Honor, I most respectfully

agree with you but must point out that the pretrial order did include a reference to unconscionability.

THE COURT: I am ruling against it.

MR. CONCAGH: I didn't bring this up this morning.

THE COURT: I brought it up because I heard your opening statement yesterday and then I looked at paragraph 3 of the pretrial order which is supposed to be defendant's contentions, C, and didn't find it. You pointed out to me in paragraph J and my reaction in thinking it over was how could this possibly be relevant or material. I am now ruling it is not.

MR. CONCAGH: All right.

THE COURT: No more about it. You have an exception.

MR. DAVIDSON: Your Honor, with the Court's approval, I have renumbered, we have adopted a numbering system which conforms with the pretrial order which makes things easier and with the Court's permission I will renumber the exhibits.

THE COURT: I don't know how I can renumber something already received in evidence before the jury. It is not clear to me why you went through that procedure you went through yesterday, but I was reluctant to stop the trial to

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have you do it right so I think those things that have been numbered will have to remain as they are. You will make the record into a completely misleading situation.

MR. NEWMAN: Henceforth, your Honor, we will be using the pretrial order numbers.

THE COURT: Very well, but you cannot have two papers with one number. You cannot have two different exhibits with one number. You understand that?

MR. NEWMAN: I understand.

THE COURT: All right, bring in the jury.

Mr. Hoskins, resume the stand.

MR. CONCAGH: Your Honor, before the jury comes in, may I make one statement?

THE COURT: Yes, very briefly .

MR. CONCAGH: There was a discussion by your Honor about areas regarding the Mercury agreement. Would you like my offer of proof on that now?

THE COURT: No.

Bring in the jury.

(Jury present.)

T H O M A S B Y R D H O S K I N S, resumed.

THE COURT: Good morning, members of the jury.

Mr. Concagh, you may cross examine.

MR. NEWMAN: Your Honor, may I just say this

before Mr. Concagh begins or continues his cross examination?

You will recall that yesterday we had an exhibit 6, which was a Xerox copy which was to be replaced by original record albums. It might be appropriate before Mr. Concagh proceeds with his cross examination that the originals that were not available yesterday be numbered 6A, B, C and D and made available to the jury.

THE COURT: I am not showing them to the jury now, but I will substitute the originals for the photostat. Give them to the clerk, and they will be numbered.

MR. DAVIDSON: Excuse me, your Honor, the numbers should be for the '63 albums, 5A and 5B and for the '64 albums, 6A and 6B.

THE COURT: All right. Proceed with your cross examination.

CROSS EXAMINATION CONTINUED

BY MR. CONCAGH:

Q Mr. Hoskins, I am showing you Plaintiff's Exhibit 1 for identification and I ask you, sir, to look at the first paragraph of that document, the first "Whereas" clause. Do you have it, sir?

A Yes.

Q Would you tell the jury what the knowledge and skill of the manager spoken about in that paragraph meant to

you in 1963 when you met in Mr. Powell's office with Mississippi John Hurt and Mr. Powell?

THE COURT: Is that relevant?

MR. CONCAGH: Yes, sir.

THE COURT: I decline to take it. Frame another question.

Payroll evidence rule. Frame another question. The contract is in evidence and it speaks for itself.

Q Mr. Hoskins, did you have any knowledge or skill about being a manager for Musical Artists in 1963?

A Yes.

Q What was your experience at the time?

A I was a musician myself. I knew other musicians, had talked to them, knew generally what was involved in promotion of music.

I had not been professionally employed in that capacity previous to this.

Q Sir, do you remember your deposition on August 29, 1974?

A Yes.

Q In this case. Do you remember whether it was taken in Mr. Silfin's office on Fifth Avenue?

A Yes.

Q Do you remember being asked questions about your

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experience in the music industry prior to 1963?

A Yes.

Q Do you remember giving the answer that you were --

THE COURT: No, do you recall being asked this question and giving this answer.

MR. CONCAGH: Okay, I will read it.

MR. NEWMAN: May we have a page reference?

THE COURT: Certainly.

MR. CONCAGH: If your HOnor will indulge me for a minute.

THE COURT: You're on your own time, Mr. Concagh. If you cannot find the page go on to something else.

You can come back to it later.

MR. CONCAGH: Thank you.

Q How long had Music Research been in existence prior to March 15, 1963?

THE COURT: Isn't that a matter of record in this case?

MR. CONCAGH: He didn't say it, your Honor.

THE COURT: I don't care what he says. Isn't it in the stipulated facts?

MR. NEWMAN: I believe it was testified to by Mr. Hoskins as well yesterday. I believe it is in the pretrial order.

Q Mr. Hoskins, what was your role in Music Research in 1963?

A I was fifty percent stockholder and vice president.

Q What were your activities?

A My activities were mainly concerned with Mississipp John Hurt.

Q Prior to Mississippi John Hurt, what were your activities in Music Research?

A Music Research was formed primarily on the impetus of the discovery of John Hurt.

Q So they were formed at the same time, is that correct?

A Yes.

Q Had you worked for any other music company prior to that date?

A No.

Q Had you had any experience with any music company prior to that date?

A No.

Q Did you manage any artists prior to that date?

A No.

Q When the agreement marked Plaintiff's Exhibit 1 was signed, were Mr. and Mrs. Spottswood present?

A Yes.

Q Did they sign on behalf of Music Research?

A I believe so, yes.

Q Did you in any way sign the document before you?

THE COURT: Isn't the document in evidence?

MR. CONCAGH: Yes, it is.

THE COURT: I won't allow that question.

Q Were you asked to sign it, Mr. Hoskins?

A No.

Q In 1963, Mr. Hoskins, did you feel you could perform all the responsibilities of a booking agent as well as a manager for Mississippi John Hurt?

A I did.

Q Was there any reference in that agreement to the management --

THE COURT: I won't take that, Mr. Concagh. The agreement is in evidence. The jury ha seen it once and they can see it when the case is over again.

Q Mr. Hoskins, did there come a time when you and the Spottswoods had a falling out?

A Yes.

Q When was that?

A It was in late '64 or early '65. September '64 it was.

Q Did they bring a lawsuit against you?

A Yes.

THE COURT: Is this a hard question for you to answer? Don't you know? Can't you answer, "Yes, I was sued," or "No, I was not sued by the Spottswoods." What is the answer? Yes or no?

THE WITNESS: Yes, we brought a lawsuit against the Spottswoods.

Q Did the Spottswoods bring a lawsuit against you?

A They brought lawsuits against the corporation.

Q Were you a party to that lawsuit?

A To which one?

Q The suit against the corporation you just mentioned

A It was them against the corporation, as an officer I suppose I was a party, yes.

Q Were there any other officers in Music Research at the time?

A Yes, there was Dick and Louisa Spottswood.

Q Any besides the three you have mentioned now, yourself and the Spottswoods, was that it?

A That was it.

Q Did you appear for the corporation?

A Yes.

Q And participate in the defense of the suit against the corporation?

A Yes.

Q Who represented the corporation in that lawsuit?

A Mr. Powell

Q What was his position with Music Research at the time?

A Well, he was of counsel for Music Research.

Q Was he general counsel for Music Research at the time?

A Yes.

Q Was he general counsel for Music Research when the agreement between Mississippi John Hurt and Music Research was signed in 1963?

A Yes.

Q Isn't it a fact that the Spottswoods sold the 1963 contract at a sherrif's sale?

A Yes, they sold it.

Q That's all I asked you. You can answer yes or no. When was that sheriff's sale, sir?

A Some time in '64, I don't know the exact date.

Q How did you get word of it?

A We got word of it by going -- Mr. Powell found out somehow at the courthouse on the day of the sale.

Q I'm asking you, sir, how you got word of that sheriff's sale of the contract.

A Mr. Powell told me.

THE COURT: Did you attend the sale?

THE WITNESS: Yes, sir.

Q When was that sale?

A I'm not sure of the date.

Q Couldyou give us an approximate?

A Some time in late '64.

Q Do you know who it was sold to?

A Yes, it was sold to Dick and Louisa Spottswood.

Q Is that the same Dick and Louisa Spottswood that you mentioned were the president and secretary-treasurer of Music Research?

A That's right.

Q What was your lawsuit against the Spottswoods? Where was that filed, sir?

A Where?

Q Yes.

A In Arlington, Virginia.

Q Did either of these cases come to trial?

A The suit of the Spottswoods against the corporation was settled, by the --

Q I'm asking you if either of these lawsuits came to trial, that's all.

A No, it was settled out of court.

Q Did the other one come to trial?

A The whole matter was settled out of court.

Q It didn't come to trial, is that right, sir?

A That's right.

Q Mr. Hoskins, if you could, would you just answer my questions yes or no, please?

A I will try.

Q If you cannot, tell me you cannot. Would you do that?

A Yes, sir.

Q After the first meeting with Mr. Solomon at Vangaurd Records in New York regarding the release of Mississippi John Hurt's albums to be recorded by Vanguard, did you ever again take part in any contract negotiations with Mr. Solomon regarding Vanguard's recording of Mississippi John Hurt's music?

A Not with regards to terms, no.

Q So other than this one meeting you never participated in any contract negotiations with Mr. Solomon, is that correct, sir?

A Person to person, no.

Q Person to person, participate in any contract negotiations, is that right, sir? Isn't that a fact?

THE COURT: Are you including telephone

conversations as well as person to person conversations?

Q Any negotiations.

THE COURT: Do you understand the question?

THE WITNESS: Yes, well, I don't --

MR. CONCAGH: Your Honor --

THE WITNESS: I'm not sure if I do or not.

MR. CONCAGH: I will withdraw it.

THE WITNESS: I don't know if he means --

THE COURT: Let's have a new question.

Q Mr. Hoskins, did you ever participate in any way with Mr. Solomon of Vanguard Records about Vanguard Records' recording Mississippi John Hurt's music other than the time you testified to yesterday?

MR. NEWMAN: Your Honor, I object to the form of the question. He means did he have a conversation, is what he is trying to say.

MR. CONCAGH: Your Honor, I will object to counsel saying what happened.

THE COURT: Never mind. Let's go forward.

Q Would you answer the question?

A I participated in negotiations at that meeting --

Q Will you answer the question yes or no, sir?

THE COURT: You see what he is asking you is this:

Is that particular meeting the only time that you talked to Mr. Solomon about recordings of John Hurt?

THE WITNESS: Person to person, yes.

THE COURT: Or by telephone.

THE WITNESS: Or by telephone.

THE COURT: The answer is still yes?

THE WITNESS: Yes, sir.

Q Isn't it a fact, Mr. Hoskins, that you turned the contract negotiations with Vanguard Records over to Mr. Gart after that first meeting?

A Well, the negotiations --

Q Isn't that a fact, sir?

Do you agree or disagree with that statement?

A I will agree with that.

Q You agree. You say "I will agree."

A Yes.

Q Are you reluctant?

A Yes, but I will still say yes.

THE COURT: What's the reluctance? Do you have some doubt about the truth of your answer?

THE WITNESS: No, it is just hard to answer about a sequence of events with a yes or no answer. I find it difficult to do.

Q Page 44 of his deposition, line 9. Mr. Hoskins,

I am going to read you a question and answers and ask you if you on August 29, 1974 were asked this question and you gave this answer:

"Q Other than this meeting you had in Mr. Solomon's office, did you participate to any extent with the negotiation of the contract? I think I asked you that and you said, 'No'.

"A Right."

Now, sir, is that a fact?

A Yes, you could say that.

Q Is that a fact, sir?

A All right, that is a fact. We will say that is a fact, yes.

Q Who participated with Mr. Solomon regarding these negotiations after the first meeting, do you know?

A Mr. Gart.

Q He participated on behalf of Music Research, isnt that a fact also?

A Yes.

Q He participated on behalf of Mississippi John Hurt. isn't that a fact, sir?

A Yes.

Q He participated with Mr. Maynard Solomon of Vanguard Records on behalf of Music Research and on behalf of

Mississippi John Hurt, is that correct, sir?

A Yes.

Q These negotiations took place after your first meeting at Mr. Solomon's office in the fall of 1966, isn't that a fact, sir?

A Yes.

Q You were not a party by way of telephone or physical presence to any of these negotiations after that first meeting at Mr. Solomon's office in November of 1966, isn't that correct?

THE COURT: Excuse me -- do we have the date right?

MR. CONCAGH: 1965.

THE COURT: 1965.

MR. CONCAGH: Yes, sir.

THE COURT: Do you understand the question?

THE WITNESS: Could you repeat it, please?

THE COURT: Reframe the question.

Q Isn't it a fact, Mr. Hoskins, that subsequent to that one meeting at Mr. Maynard Solomon's office that VAnguard Records in the fall of 1965, you did not participate any further in the negotiations of the agreement between Music Research, Mississippi John Hurt and Vanguard Records, isn't that a fact, sir?

A That's a fact. There were no negotiations.

THE COURT: I think he said it is the fact. You knew that Mr. Gart was continuing in negotiations with Mr. Solomon following that meeting in the fall of '65 that you just talked about?

THE WITNESS: Yes, sir.

Q Did you have conversations with Mr. Gart about his talks with Mr. Solomon?

A Yes.

Q Did you have talks with Mr. Gart about his meeting with Mr. Solomon prior to Mr. Gart ever meeting with Mr. Solomon?

A Could you restate that, please?

Q Sure.

Did you have talks with Mr. Gart about him, Mr. Gart, meeting with Mr. Solomon at Vanguard Records regarding Mississippi John Hurt's music prior to Mr. Gart going physically to Vanguard Records?

A Yes.

Q You knew he would go there on behalf of Music Research, isn't that a fact?

A Yes.

THE COURT: Can you hear him, members of the jury?

A Yes.

Q You knew he went there on behalf of Mississippi John Hurt, isn't that a fact?

A Yes.

Q Did you say anything to Mr. Gart -- withdraw that.

When Mr. Gart went to Vanguard Records to talk about Mississippi John Hurt, was he representing Vanguard Records?

A Yes.

Q Did you ever ask him whether he represented Vanguard Records?

A Yes.

Q When did you ask him that?

A Some time during those negotiations.

Q Was it before he went there on behalf of Music Research?

A Yes, he had other artists placed with Vanguard Records. He was doing business with Vanguard on more or less of a day to day basis.

THE COURT: He told you that?

THE WITNESS: Yes, sir.

THE COURT: You didn't listen to counsel's question. Counsel asked you whether Mr. Gart told you that he was representing Vanguard. Did he do so? Did he tell you

that?

THE WITNESS: More or less, yes.

THE COURT: What did he say?

Q He went there on behalf of Music Research and on behalf of Mississippi John Hurt. Isn't that a fact, and do you want to change the testimony you just gave?

A All right, yes.

On behalf of John Hurt and on behalf of Music Research, yes.

THE COURT: What did Mr. Gart tell you? What are the words or substance that he told you prior to going there with respect to his relationship with Vanguard?

THE WITNESS: he said that he had artists that were on Vanguard Records and that he knew Maynard Solomon and he thought that Maynard would be interested in having John Hurt on his label.

THE COURT: Did he tell you he was representing Vanguard?

THE WITNESS: Not as an agent, no. Simply that he had a working relationship similar to the relationship he had with me in Music Research.

MR. CONCAGH: Move to strike the conclusory statement.

THE COURT: No, I will let it stand. That's what

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he told him.

Q Prior to any discussions having to do with Vanguard Records, did you and Mr. Gart discuss the possibility of exposing Mississippi John Hurt to a large recording company?

A Yes.

Q How long before the meeting with Mr. Solomon at Vanguard Records did these discussions take place?

A It was quite a while, six months or more.

Q Or more?

A Yes.

Q How many of these discussions had you been to with Mr. Gart regarding Mississippi John Hurt and a large recording company?

A Several, many.

Q Could you give us an idea over the six-month period as to how many you mean by "several"?

A Say ten.

Q Could it have been more?

A It could have been more, it could have been less.

Q Did you feel at the time you were talking to Mr. Gart about this exposure to a large recording company it would benefit Mississippi John Hurt?

A Yes.

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Q Did Mr. Gart agree with you?

A Yes.

Q Did Mr.Gart tell you he would try on behalf of Music Research to associated Mississippi John Hurt with a large recording company_

A Yes.

Q Did you agree with his statement?

A That he had tried?

Q Yes.

A Yes.

Q Did you give him authority to go out and do that?

A To negotiate, yes.

Q And make a deal, isn't that right?

A To negotiate. He could not make a deal.

MR. CONCAGH: I would like to object.

THE COURT: I overrule your objection. You asked for it.

Q Did you ever have any written agreement with Mr. Gart about his going to negotiate for Music Research?

A No.

Q Was this all oral?

A Yes.

Q Do you know whether he had any notes or memoranda

regarding this agreement?

A No, I don't.

Q Do you have any notes or memoranda regarding this deal?

A No.

Q Do you remember making any at the time?

A No.

Q Then the entire agreement was an oral understanding between you and Mr. Gart, isn't that correct?

A That's correct.

Q It came into being at least six months prior to the meeting at Mr. Solomon's office at Vanguard Records, is that correct, sir?

A Yes.

MR. CONCAGH: Your Honor, at this time I would like to show the witness Plaintiff's Exhibits -- did we refer to these as 56 and 57 yesterday? Is that right?

MR. NEWMAN: Yes.

THE COURT: 56 and 57.

Q After the meeting at Mr. Solomon's office of Vanguard Records, Mr. Hoskins, that you attended, did you ever see either of those agreements that are before you?

A I saw an agreement that was similar to both of these.

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Q Didn't you say yesterday, sir, that it was identical?

THE COURT: No, the jury heard what he said yesterday. Let's move along with this trial. I'm not going to have any witness rehash what he said yesterday.

He was examined yesterday about this and I'm sure the jury remembers it.

Q Did you ever speak to Mr. Solomon about any changes in that agreement that was before you after your meeting with Mr. Solomon in 1965 at Vanguard Records?

A Not to Mr. Solomon, no.

Q So all your discussions regarding any changes in this agreement were with Mr. Gart, is that a fact, sir?

A That's correct.

Q Did you ever have any conversations with Mississippi John Hurt about the agreement that is before you?

A Not specifically, no. Not that I recall.

Q You don't recall?

A I don't believe I ever had --

THE COURT: You see that is a very simple question. When you answer it "Not specifically, no," that answer is not very comprehensible to me.

Did you ever discuss either of those exhibits,

56 or 57, with Mr. Hurt?

THE WITNESS: No.

THE COURT: All right. Tell him so.

Q Are you familiar with Mississippi John Hurt's signature? Were you familiar with it in 1965?

A Yes.

Q Can you identify it on those documents, either one?

THE COURT: Those documents are admitted as genuine. There is no question in this case that the signature of John Hurt is John Hurt's signature.

Q When was the first time you saw these exhibits, Mr. Hoskins?

A These, some time after the institution of this lawsuit.

Q When was that, sir?

A In 1973. I may have seen one of these executed documents before that in response to a letter that Mr. Powell wrote to Mr. Solomon's attorney.

Q When was that, sir?

A 1970, '71.

Q Did you ever have any discussions with Mr. Rosenthal, your co-plaintiff in this agreement signed by Mississippi John Hurt?

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A Not until after we had received it in 1971.

Q What did you tell him?

MR. NEWMAN: Your HOnor, I object.

THE COURT: Overruled.

If we are getting the conversation, I want the time and place and who is present, which should be elicited before he gives the conversation.

MR. CONCAGH: I will lay the foundation.

Q Did you have a conversation with Mr.Rosenthal about this agreement?

A Probably, yes.

Q Do you remember?

A Yes.

Q Where was it?

A Probably in Mr. Powell's office --

THE COURT: No "probably." Your best recollection. What is your best recollection of the place at which this conversation you're testifying about was held?

THE WITNESS: In Mr. Powell's office and in other places.

Q Who was present?

A Mr. Rosenthal, myself and Mr. Powell.

Q What did you say in that conversation regarding this document?

A Simply that I never signed it and that I had never seen a copy of it before and that it resembled the sample contract that Herb Gart and I had gone over and that Herb Gart had advised me on and that Herb Gart had made changes in and crossed out.

Q The changes you testified to yesterday, is that correct?

A Yes, sir.

Q Do you know how your signature was clipped off that contract, Mr. Hoskins?

A My signature wasn't clipped off this contract because I never signed it.

Q You tell me, sir, does Exhibit 56 carry -- withdraw that. I will ask a simple question, your Honor. If youwill forgive me, I will wrap this up in one question, this inquiry. Excuse me.

Mr. Hoskins, isn't it a fact that Exhibit 56 has a space for your signature and in Exhibit 57 that space is clipped off?

A This is true.

Q In 1965 if the changes that you and Mr. Gart had been made on the contract, would you have signed it?

A If the changes were made on the contract, a contract?

Q Yes, sir.

A If he had submitted a contract to me that was compatible with our verbal understanding of what the contract was to say after my attorney had looked at it, yes, I would have signed it.

Q You would have signed it?

MR. CONCAGH: I move to strike.

THE COURT: I will let the answer stand. The motion to strike is denied.

Q Mr. Solomon was present when you and Mr. Gart physically made those changes you testified to yesterday would you have signed a contract if Mr. Solomon had signed the contract?

A No, I would not have.

Q You would have spoken to Mr. Powell and then you would have signed?

A That's right.

Q You had no further conditions other than the conditions you and Mr. Gart had discussed, isn't that a fact?

A That's right.

Q You would have showed it to your attorney only to review it, isn't that a fact?

MR. NEWMAN: Objection.

THE COURT: He's asked about his intentions. He

may answer if he understands the question.

MR. CONCAGH: I will withdraw that.

Q Was your attorney negotiating this contract for you?

A No, he was not.

Q Mr. Gart was, isn't that a fact?

A That's correct.

Q Did you ever ask Mr. Solomon or anybody else for a copy of the original contract signed by Mississippi John Hurt, signed by Mr. Solomon and signed by Mr. Gart?

A I never knew that these contracts had been signed.

Q Did you ever ask anybody for a contract?

A I asked Mr.Solomon on several occasions for the contracts reflecting the oral understanding that we had with respect to John Hurt recording for Vanguard, yes.

Q Mr. Hoskins, when you say an oral understanding, was it in any way different other than the written understanding you would have signed if the changes you discussed yesterday were made, did the oral understanding differ in any way from the written understanding that you spoke about yesterday?

A Yes.

Q Did you communicate that to Mr. Gart?

A No, because I had not seen these.

Q Mr. Hoskins, you said you saw this form contract and Mr. Gart made some changes.

A That's right.

Q And you said you wouldhave signed that contract if those changes were agreed to by Mr. Solomon, isn't that a fact, sir?

A That's right.

Q You're talking about an oral understanding. Was this another agreement or are you speaking about the changes in the contract that you had before you with Mr. Gart?

A The contract that I had before me --

Q Would you answer the question yes or no. Were there two agreements or was there one agreement that you and Mr. Gart changed?

A There was only one.

Q So when you refer to an oral understanding you're speaking about this exhibit in evidence with those changes you say which were made by Mr. Gart, isn't that a fact, sir?

A No, because the language in this agreement I would not have signed.

Q But you said Mr. Gart changed it physically?

A That's right.

Q You said you would have signed it, didn't you, sir?

A I said I would have signed it if the changes that he made --

Q Fine.

A -- were compatible with what I wanted.

Q That would have represented what you're calling today an oral understanding, isn't that right, sir?

A It would have, yes.

Q So there was no oral understanding separate and apart from the agreement as modified by Mr. Gart in your presence, is that right, sir?

A This is true.

Q So there was one agreement, isn't that right, sir, that you saw?

A Here are two agreements.

Q One is a draft and is not signed and the other one is signed by the parties.

A Which is the draft.

Q Isn't that right? One of those documents, agreements, is signed and initialed and the other agreement is not signed?

A That's right, and apparently there are several.

Q Mr. Hoskins, don't quarrel with me, please. Just answer the questions if you can and if you don't understand I will be happy to withdraw or rephrase the question. Do you

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understand that?

A Yes, sir.

Q You say you asked Mr. Gart for a copy of this agreement after you and he went over the changes, is that right, sir?

A That's right.

Q How many times between 1963 and the institution of this lawsuit in 1973 did you ask Mr. Gart for a copy of this contract?

A Quite a few times.

Q Would you tell us what "quite a few times" means to you?

A Many times between --

THE COURT: Are you talking about ten, twenty, twenty-five, six, sixty, seven, how many times? A simple question.

THE WITNESS: At least twenty. Ten, twenty times.

Q Did you ever stop asking Mr. Gart for a copy of the contract he and you changed?

A Yes, finally.

Q When did you finally stop?

A Some time after John Hurt's death.

Q When was that?

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THE COURT: That we all know, November 2, 1966. Let's not have any repetition here.

Q What do you mean by shortly after his death?

A Shortly after his death, a month or so.

Q Did you ever make a request of Mr. Gart for a copy of this contract at any time from the beginning of 1967 on?

A I made requests, but it wasn't for copies of this contract.

Q Can you answer the question, Mr. Hoskins? Did you ever make a request of Mr. Gart for a copy of the contract after January of 1967?

A No.

Q Did you ever make a request of Mr. Solomon for a copy of the contract as signed and as changed, as you say, by Mr. Gart after January of 1967?

A No.

Q Did you ever make a request of anybody else for a copy of this changed contract after January of 1967?

A Well, January '67 --

Q You can answer the question yes or no.

A I will say no, but I'm not certain of January.

THE COURT: What is there about it that you're not certain?

THE WITNESS: I don't know if it would be January or February.

Q February?

A All right.

Q Ever, anybody, Mr. Solomon, Mr. Gart, anybody else, after February of 1967?

A No.

Q Did you think it was important as manager of Mississippi John Hurt to obtain any copies that he might have entered into?

A John Hurt could not enter into a contract as Mississippi John Hurt. Only Music Research.

MR. CONCAGH: I object to the conclusion of the witness.

THE COURT: I think he is trying to understand your question. I think his answer is no, he didn't, because he didn't think that such a thing could happen.

Q Did you feel it was important that you find out from Mississippi John Hurt whether he entered into any contracts, whether he signed any agreements?

A Yes, I did.

Q You did at the time, isn't that correct?

A I did at the time and he said that he had signed no contracts.

Q Did you ask Mr. Gart?

A If John Hurt had signed anything?

Q Yes.

A Yes.

Q What did he tell you?

A No.

Q Is Mr. Gart lying when he says Mississippi John Hurt signed this contract?

MR. NEWMAN: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever ask Mr. Solomon whether Mississippi John Hurt signed this contract?

A This contract?

Q Yes.

A I asked Mr. Solomon if he had had --

Q Could you answer the question, Mr. Hoskins?

Did you ever ask Mr.Solomon whether Mississippi John Hurt signed the contract that is before you with his signature on it?

MR. NEWMAN: Objection. How could he ask if he didn't know it existed?

MR. CONCAGH: He says he found out.

THE COURT: I am not going to argue with it. Objection overruled. I will let him answer.

A I did find out that this contract --

Q Mr. Hoskins, would you just answer my question?

A Ask the question again. Would you ask the question again?

Q Did you ever ask Mr. Solomon whether Mississippi John Hurt ever signed any contracts for Vanguard Records?

A Yes.

Q When did you ask him that?

A Some time in July of 1966.

Q Did you ever ask him after that occasion in July of 1966?

A No.

Q Other than that one occasion -- withdraw that.

What was his answer?

A His answer was no.

Q Mississippi John Hurt's answer was no, is that right?

A That's correct.

Q I don't know how your name got clipped off that contract, do you?

A I have no idea.

Q Did you ever make any inquiries of anybody other than Mr. Solomon, Mr. Gart or Mississippi John Hurt as to whether Mississipi John Hurt ever signed any agreements?

THE COURT: You mean with Vanguard?

MR. CONCAGH: With anyone, sir.

THE COURT: With anyone.

THE WITNESS: Dick Waterman.

Q Anyone else?

A Not that I can think of.

Q Didn't you think it was important as the manager of Mississippi John Hurt that you find out what agreements he may have signed?

A I thought it was important --

Q Could you answer the question, Mr. Hoskins?

THE COURT: He said he thought it was important.

MR. CONCAGH: If he will stay there, but he will wander on.

THE COURT: Don't argue with the witness. Let's proceed.

Q Other than these checks that were damaged in the flood, do you have any covering letter of payments made to Jessie Hurt, John Hurt's widow, by Music Research?

A I don't believe so, no.

Q Did you look for them?

A Yes.

Q Where did you look?

A I looked in all the files that we had at

Mr. Powell's office and all the files that I had in my possession.

Q What did you look for?

A Well, we looked for all the documents -- for anything pertaining to John Hurt that we had.

Q Did you look for any covering letters sending checks to Mrs. Jessie Hurt?

A Yes.

Q When were these covering letters sent?

MR. NEWMAN: I think it should be established if they were sent at all.

Q Were they sent?

A Yes.

Q When were they sent?

A Anytime from September 1965 until as late as a month or so ago.

THE COURT: He is asking you about checks to Mrs. Hurt.

THE WITNESS: That's correct.

THE COURT: Jessie Hurt being the wife of John Hurt.

THE WITNESS: Right.

Q What about the documents that you had a month ago. Is it your testimony that they are lost, too?

A No.

Q Where are they?

A THE COURT: I don't care where they are. They don't have anything to do with this case. Let's go forward.

MR. CONCAGH: An issue is made.

THE COURT: No issue. I don't want anything to do with checks that were sent a month ago. Let's try this lawsuit.

Q Mr. Hoskins, how long did the recording session at Vanguard take in February of 1966?

A How long?

Q Yes.

A We started some time in the evening and ran quite late.

Q Could you give us an approximation of the time?

A I would say six hours.

Q Do you remember what Mississippi John Hurt's repetory was in 1965 and 1966, how many songs did he have?

A Seventy, eighty.

Q Do you remember how many songs he recorded for Vanguard?

A No, I do not.

THE COURT: Have you forgot since yesterday?

THE WITNESS: I didn't know that I knew yesterday.

Q Did you say thirty or forty yesterday?

A I don't remember if I did or not.

Q Was it being factored when you said it yesterday?

A I'm not sure that I know how many --

Q Was it a fact, Mr. Hoskins?

A I don't know how many.

Q When you said yesterday that Vanguard Records recorded thirty to forty songs of Mississippi John Hurt in February of 1966, is that a fact, sir?

A I'm not sure that I said that, no, because I don't know how many songs they recorded. I didn't keep a log of the songs that they recorded.

Q I am not asking you that, Mr. Hoskins. I am asking you whether it is a fact that Vanguard Records recorded thirty to forty songs of Mississippi John Hurt in February of 1966? Is it a fact or is it not a fact?

A I do not know it is a fact.

THE COURT: This is a session, as I understand it, that took place in New York City where they had a studio?

THE WITNESS: Yes, sir.

THE COURT: Ordinarily I don't permit this type of question because the jury heard this case yesterday,

but did you or did you not tell us yesterday in your testimony that thirty or forty songs were recorded by Mississippi John Hurt at that hotel in Vanguard's designated studio in your presence on that date in early February, 1966? Didn't you tell us that yesterday?

THE WITNESS: I may have, but it was a guess as to the number.

THE COURT: Did you tell us it was a guess?

THE WITNESS: I may have. If I said thirty or forty, obviously I didn't know.

THE COURT: As I understand it, that was the session when Mr. Gart was there and Mr. Patrick Sky was there and Mr. Solomon?

THE WITNESS: Yes.

THE COURT: You were there and of course Mr. Hurt was there and you said there were engineers and one or two others present, is that right?

THE WITNESS: Yes, sir.

THE COURT: It took six hours?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q What is an artist's repetory, do you know, Mr. Hoskins?

A It is the songs that he knows.

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Q The songs that he knows and performs, isn't that correct?

A Right.

Q When you said sixty or seventy, correct me if I'm wrong, how many didyou say Mississippi John Hurt had at the time?

A Had at the time?

Q At the time in 1965, February of '66?

A Again, this is a guess --

THE COURT: No guesses. Your best recollection or your best estimate you may give, but no more guessing.

A Seventy.

THE COURT: You're not here to guess.

Frame the next question, please.

Q Vanguard Records had half of Mississippi John Hurt's repetory, isn't that correct, in 1966?

A Approximately, yes.

Q Was it more?

A More or less.

Q And you were there?

A Yes.

Q Did you say anything to Mr. Solomon about this?

A Yes.

Q About the number of songs they recorded?

A I told him they could record anything --

Q Did you say anything to Mr. Solomon about the number of songs they recorded in the session in February of 1966?

A With regard to what?

Q To limit it.

A No.

Q Of course you didn't. That's all you have to say.

THE COURT: No speeches.

MR. POWELL: Let him answer the question.

THE COURT: I don't think the reporter has the answer.

The statement is stricken out. No more statements.

Q Mr. Hoskins, how many hours of music by way of songs are contained on the vault tapes you testified to yesterday that are in evidence?

A About twenty-five hours.

Q Twenty-five hours of songs, is that right?

A Yes, sir.

Q Didn't you tell us yesterday --

THE COURT: No, no more. The jury remembers what he said yesterday.

Q Was there any dialogue on those twenty-five

hours?

A Yes.

THE COURT: Do you know what dialogue is?

THE WITNESS: I assume he means speaking.

THE COURT: Of one person or two?

Q Do you agree with the Judge?

THE COURT: How far did you go in school?

THE WITNESS: High school. Some college.

THE COURT: How many years of college?

THE WITNESS: About one.

THE COURT: About one?

THE WITNESS: About one.

THE COURT: You don't remember how long?

THE WITNESS: Well, I didn't last the whole year.

THE COURT: Go ahead.

Q Were you a guitar repairman after that?

A After what?

Q College.

A When I left college and immediately thereafter --

Q I'm asking you, Mr. Hoskins --

A I have repaired instruments before and after.

Q After college were you a motorcycle messenger?

A No.

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Q You were also a manager of recording artists in 1963, isn't that what you told us?

A Yes.

Q How much of these twenty-five hours of tape were recorded at coffee houses?

A Probably three or four.

Q Are those live recordings, is that what is referred to in the business as live recordings?

A Yes.

Q Do you know who made those recordings?

A Mr. Rosenthal made some and some were made by a man in Detroit, Michigan.

Q Who is he?

A His name is Wright Gedge.

Q Do you know when they were made?

A Some time in '64.

Q Both Mr. Rosenthal and Mr. Gedge?

A I can check the log.

Q Was any of those twenty-five hours live recordings at concerts other than coffee shops?

A I don't believe so.

Q How much dialogue is contained on the twenty-five hours?

THE COURT: Does he know what dialogue is?

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Q Do you know what discussions between Mississippi John Hurt and somebody else are?

A Interviews.

THE COURT: Two people is a dialogue. One person is a monologue.

Q Would you give us in hours, how many hours of dialogue are contained on the twenty-five hours?

A Probably a couple or three or four.

THE COURT: Who was the other performer?

THE WITNESS: Myself for one.

Q Where were these three to four hours made?

A Some were made in Washington.

Q When, sir?

A '64, '63, probably '65.

Q What were they recorded on, what type of an instrument?

A Good quality tape recorder.

Q Would you tell us the brand of the good quality tape recorder that you're testifying to?

A Sony, Nagra.

Q was it more than one?

A Yes, there were several different occasions.

Q What type of Sony?

A I don't recall the model offhand. It's Mr.

Rosenthal's machine, he can tell you.

Q The dialogue?

A The dialogue, yes.

Q Did he record all the dialogue?

A He recorded a good bit.

Q How much of it did he record?

A Probably two-thirds.

Q On the Sony tape recorder?

A Yes.

Q Did you see the Sony tape recorder?

A Yes.

Q Would you describe it to the jury?

A As I recall it was a two track machine of this size (indicating) that was fifteen inch per second. Of course, it wasn't played at fifteen inches per second for interview material.

Q Do you have those three to four hours of tapes of interviews here today?

A Yes.

Q What else are on those twenty-five hours, Mr. Hoskins?

A Songs.

Q How many songs?

A How many performances?

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Q How many songs?

A Ninety plus maybe twenty variations.

Q Do you know how many songs were released by Vanguard in its first two albums in 1966 and 1967?

A Approximately twenty.

Q Where were these songs recorded?

A Which songs?

Q The songs you referred to as being on the tapes.

A Recorded at various studios and various coffee houses.

Q How many of the ninety songs were recorded in studios?

A Most of them, probably.

I could check the log.

Q What recording studios?

A Windwood Recording Studio in Washington. There is the Library of Congress Recording Studio in Washington. There was two partners in Anapolis, Maryland, Peter Zilch and Sandy Fisher who had a professional recording studio.

Q Any others?

A Those were the main ones.

Q Can you remember any others?

A I believe there is some stuff that was recorded at radio stations in Boston. There is the stuff Mr. Gedge

did. Studios, no, I believe those were all.

Q Are there any others that might be contained on there that you cannot remember right now?

A It's possible.

Q You say, don't you, mr. Hoskins, that that is a very important aspect of Music Research?

A Yes.

Q You say it is practically the only asset of Music Research, don't you, sir?

A Yes.

Q Do you know when the Windwood Recordings were made?

A '63 and '64.

Q Do you know who made them?

A Peter Kaikendahl.

Q When did you obtain those recordings?

A I beg your pardon?

Q When did you obtain those recordings from Mr. Kaikendahl?

A When they were recorded.

Q When was that, sir?

A In '63 and '64.

Q Sir, isn't it a fact that you received those from Mr. Kaikendahl this summer when you threatened to sue

him?

A There were some that he still had in his possession and we got those back.

Q You didn't tell us that.

THE COURT: Don't argue with the witness.

Q Is it your testimony, Mr. Hoskins, that that vault of tapes is worthless?

A I don't think it is worthless, no.

Q Do you think it has value?

A I do. It has value to me if nothing else.

THE COURT: We are talking about monetary value, money.

THE WITNESS: I think it did have value.

THE COURT: He is asking you "Does it have value."

THE WITNESS: Yes, it has value.

Q It has value now. There is no question about that in your mind? Is there, Mr. Hoskins?

A No.

Q In fact, you knew it had value when you went to Mr. Kaikendahl and threatened to sue him to get some tapes from him this summer, isn't that right, sir?

A That's right.

Q Do you have those tapes marked in any

identifiable way?

A All of them.

Q The tapes you got from Mr. Kaikendahl this summer that you wanted to add to your valueless collection?

MR. NEWMAN: Objection.

THE COURT: Sustained.

Reframe the question.

MR. CONCAGH: Withdrawn.

Q Do you know where those tapes are located on that twenty-five hours you're speaking about?

A Yes.

Q Are they marked by any specific indication?

A Yes.

Q What do they contain? What jacket, what box are they contained in? Could you tell us by looking at them?

A Could I tell you what boxes they are contained in without looking at them? They are in boxes that they are in. They're marked.

Q How many are there?

A Three, I believe.

Q How long a time span is contained on those three tapes?

A Not a whole lot.

Q Could you tell us what you mean by "not a whole

lot"?

A It seems to me there was like maybe one or two songs that were complete --

Q I'm asking your, sir, how many hours of tape are contained in the Kaikendahl tapes you got this summer.

A Maybe forty minutes.

Q Could it be more?

A It could be more. It could be less. It's about that.

MR. CONCAGH: I call upon Mr. Newman, if he would during the recess --

THE COURT: Yes, during the recess he can find those tapes for you. Let's go ahead with the trial.

Q Who recorded the Library of Congress tapes?

A Joe Hickerson and Dick Spottswood.

Q You got those tapes through a lawsuit with Mr. Spottswood, did you not?

A No.

Q Wasn't that part of the settlement of the lawsuit?

A Well, --

Q Could you answer that question yes or no?

A We got those tapes because --

Q Did you get those tapes as the result of a settlement of a lawsuit between you and Mr. Spottswood?

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A No.

Q Did Mr. Spottswood have physical possession of the tape I think is the question.

A No, the Library of Congress has possession of the tapes.

Q Do you know that Mr. Spottswood works at the Libarry of Congress today?

A Yes, I do.

Q How many hours are among the Library of Congress tapes in these twenty-five hours?

A I'm not sure exactly.

Q Are they valuable?

A I would say they are, yes.

Q Are they very valuable?

MR. NEWMAN: Objection.

THE COURT: Well, I will sustain the objection to that.

Q What do you mean when you would say they are valuable.

A Monetary wise?

Q Yes.

A Well, I would say that they are of sufficient quality and of such interest that phonograph records could be made from them.

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Q Do they have any interchangability, any marketability?

A Yes.

Q How about the recordings that were made in Annapolis, Maryland by Mr. Zilch and Mr. Fisher. How many hours of those recordings are contained on those twenty-five hours of tapes you have in court?

A I don't know. I could look at the logs that we have prepared and I could answer your questions a lot better.

Q Would you, please?

THE COURT: No, the logs are in evidence, aren't they ?

MR. CONCAGH: I don't think they are yet. I would like to have them admitted if they're here.

THE COURT: We will have them received in evidence if they are listed in the pretrial order.

MR. DAVIDSON: The logs are not listed and the tapes are listed. This only reflects what is on the back of the tapes.

THE COURT: I think the logs could be received in evidence as bearing on this witness' credibility. Mark them in evidence.

We are taking too long this morning. You have to

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get right to the point here. No more on the logs. The logs will be received in evidence. You want it as a defendants' exhibit?

MR. CONCAGH: It doesn't matter, sir.

THE COURT: Offer it in evidence and let's go on to something else.

MR. CONCAGH: I will offer the logs in evidence.

THE COURT: They are agreed to be the logs. Frame the next question in the cross examination. I want to get on to the next witness.

Q Mr. Hoskins, was it your present intention in the summer of 1975, to put out a Mississippi John Hurt record album?

A The summer of '75?

Q Yes, sir.

A No.

Q You had trouble with that question.

A I'm not sure exactly what you mean.

Q Don't you intend to put out another Mississippi John Hurt album?

A I would like to, yes, sir.

Q So what you have referred to as worthless tapes have some market value, don't they?

A Yes.

Q You intend to put out a record album having to do with twenty-five hours contained on this exhibit in evidence don't you, sir?

A Yes.

MR. CONCAGH: I have no further questions.

(Defendants' Exhibit V-1 was received in evidence.)

xxx

CROSS EXAMINATION

BY MR. VASSALLO:

Q You testified, Mr. Hoskins --

THE COURT: No, none of that. Just frame a question. Whatever he testified to the jury heard it.

MR. VASSALLO: Very well.

Q At your deposition in this action, Mr. Hoskins, did you not give this answer to this question -- I refer counsel to page 157, line 22, and to the previous colloquy which refers --

THE COURT: No speeches. You have given him the page number. Just read the question and read the answer.

Q Referring to the Vanguard agreement:

"Q When you asked John Hurt about it, he denied having signed an agreement?

"A I never asked him about it.

"Q At no time before his death?

"A No."

Did you give those answers to those questions under oath at your deposition in this action?

A Yes.

Q How old were you when you asked Mr. Gart to negotiate a recording agreemeent with a major recording studio?

A How old was I?

Q Yes.

THE COURT: Or John Hurt?

MR. VASSALLO: Yes, sir.

A 24, 25.

Q Had you ever negotiated a recording agreement in your life when you asked Mr. Gart to do so?

A No.

Q You asked Mr. Gart to do so precisely because he had, isn't that a fact?

A This is true.

Q You knew that artists whom he represented were signed to major recording companies and their recordings were being promoted and distributed by such companies, isn't that correct?

A That's correct.

Q You had never even seen a recording agreement at

the time you asked Mr. Gart to negotiate one, had you?

A Yes, I had.

Q You had?

A Yes.

Q Apart from the one that you and Mr. Hurt signed in Mr. Powell's office in '63, had you ever seen a recording agreement with a major recording company?

A I'm not sure about major recording company, but we had at the time that we prepared this contract, sample contracts from the recording companies which Mr. Powell used as a guide.

Q Some forms which had been collected?

A Yes, sir.

Q You had no participation in their draftsmanship or their negotiation?

A No, sir.

Q The very decision to try to get Mr. Hurt signed to a major recording company was, in fact, made by you with Mr. Gart as well, was it not?

A Yes, sir.

Q It was more or less a common decision?

A That is true.

Q And Mr. Gart told you, did he not, that the only way to break through, as it were, the career of this old man

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without traipsing him all over the country to perform at coffee houses, was to sign him to a major company, get him national exposure that a major company could deliver and then hopefully enable him to perform dates for perhaps 10 and 20 thousand dollars an evening, instead of $200, isn't that the essence of what Mr. Gart told you?

A Well, your prices are a little out of line, but that is essentially true.

Q That is the essence of it. Isn't the very first thing you and Mr. Gart discussed after that -- withdrawn.

Didn't Mississippi John Hurt also make his feelings known on the subject, that at 73 years of age he wanted some time for fishing and hunting and a little money in his pocket before he died, rather than traipsing all over the country performing every night before audiences?

A That's right.

Q He made his views known, too, didn't he?

A Yes.

Q He was how old at that time?

A 73.

Q Isn't one of the first things that Mr. Gart ever told you when you discussed the possibility of signing John Hurt with a major recording company that a major recording company might very well not be interested in just a two-record

deal?

A True.

Q He said it might be impossible to get such a deal, didn't he?

A He said it would be difficult.

Q Did you discuss with Mr. Gart what his compensation would be for his efforts to negotiate such an agreement?

A Yes.

Q What was your discussion with Mr. Gart on that subject?

A Well, Herb was interested in --

THE COURT: No, the discussion, not what he was interested in .

Q What did he say and what did you say?

A All right.

Herb said that he was interested in having John signed to a major label for the exposure because, as John's booking agent, the fees that Herb would be able to get for John would be substantially increased and that he was also interested in John's welfare and wanted to see John get the money from a larger company such that he could take it easy and go fishing.

Q You believed him that he was interested in John's welfare, did you not?

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A I knew he was.

Q You knew he was.

When he said hehad a financial interest because if John's bookings went up in value he would get a bigger commission, he didn't ask you to put it in writing, did he?

A No.

Q It was strictly a handshake?

A Right.

Q In fact, he was escorted out of the picture, was he not, right before John's death?

A Well, I won't say he was escorted out.

Q He was out?

A No, he wasn't out as far as I was concerned. He was still in. But he himself chose to remove himself.

Q You did have correspondence with Dick Waterman didn't you, in which you said to Waterman, in effect, Gart doesn't have to be the exclusive booking agent, there is room for you, too?

A This is true.

Q And you did that?

A This is true.

Q As John's manager?

A That's right.

Q Where were you keeping your offices when Gart

was negotiating these or attempting to negotiate a recording agreement for John with a major company?

A Annapolis, Maryland.

Q Where, in your home, in an office?

A In my home.

Q Your files were in the basement?

A No, not at that time.

Q Where were your files at that time?

A I had a large apartment which I had an office and I had room for packing, shipping. A room for warehousing records.

Q Did you have any regular employees apart from yourself?

A I had several part-time helpers.

Q Supposing you were out to lunch, was there somebody there to take a phone call or message for you?

A Sometimes, yes.

Q And sometimes no?

A That's right.

Q And there were also times for weeks on end when you were on what you called once before, field expeditions, were there not?

A That is true.

Q You were up in the hill country?

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A True.

Q You had no phone with you or way to be communicated with, isn't that right?

A Well, sometimes yes, sometimes no.

Q There were times, days on end, when you were incommunicado, is that not true?

A Yes.

Q During part of that whole time both you and the Spottswoods, who had this terrible falling out --

MR. NEWMAN: Objection.

THE COURT: Sustained.

Q There were times during this negotiation by Mr. Gart when both you and the Spottswoods were purporting to speak for Music Research, Inc., correct?

A Correct.

Q Some of the time each saying different things, correct?

A Correct.

Q And some of the time each saying different things to Gart as to what he should try to do, correct?

A Correct.

Q And he listened to you both, did he not?

A Correct.

Q Did he tell you about his dilemma that you were

saying one thing and they were saying another?

A Yes, right.

THE COURT: I don't know just what the time is of this incident we are talking about. Would you fix a time when they are saying one thing and he was saying another to Mr. Gart?

Q In my last question I referred to the period of negotiations of the major record company recording agreement. Could you for the benefit of his Honor and the jury, tell the jury, as best you can reconstruct it, what span of months or what period of time there was this disagreement conveyed to Mr. Gart by you and your partners concerning what should be done in behalf of the company?

A Sometime in '65, early '65. Early to mid '65.

Q Early to mid '65. They continued thereafter, did they not, all through the negotiations with Mercury Records?

A Right.

Q And the negotiations with Mercury continued through the end of May, did they not?

A Yes.

Q Of '65 at least?

A Yes.

THE COURT: When did the Spottswoods get out

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of the picture as far as Music Research is concerned?

THE WITNESS: I believe in April of '65.

MR. VASSALLO: Indulge me, your Honor, I'm trying not to cover ground covered by my colleague, and I will try to be as quick as I can.

THE COURT: That's all right.

Q The first record company Mr. Gart suggested he might be able to do business with in this negotiation wasn't Vanguard, was it?

A No, sir.

Q In fact, he negotiated for quite a period with Mercury Records, did he not?

A Yes, sir.

Q And he presented you with a contract drafted by Mercury for signature, did he not?

A Yes, he did.

Q Was he able to get a two-record deal from Mercury?

A No, sir.

Q And you accepted a four-record deal from Mercury in May of '65, did you not?

A No, I did not.

Q Did you have your counsel write to Mercury that you were flexible on a four-record deal and willing to accept

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one?

A Not that I was willing to accept one, no. The letter will speak for itself I would think.

MR. VASSALLO: May I have Plaintiff's Exhibit 19, please, pretrial marking.

THE COURT: While he is looking for it, you can use a copy. Let's go forward.

MR. VASSALLO: I will offer it in evidence. That is the only reason I asked for it.

THE COURT: You use a copy while they are looking for it.

Q Did you discuss with Mr. Powell in May of 1965 the Mercury agreement?

A Yes.

Q Did you authorize him to write a letter to Mercury expressing your views on the agreement that they proposed?

A Yes.

Q Did the letter express your sympathies accurately?

A Fairly, yes.

Q Did the letter not inform Mercury "That Mr. Hoskins has not insisted on two recordings, but would like to know if you, Mercury, are flexible on this point"?

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A To Mr. Powell I had told that I wanted two and only two. For purposes of negotiation, Mr. Powell phrased the letter the way he did.

THE COURT: Was that letter communicated to Mr. Gart directly or indirectly by you? Did he get a copy of it or did you tell him what was in it?

THE WITNESS: I don't believe so, but possibly. Mr. Gart had given me their proposed contract. I gave it to Mr. Powell.

MR. VASSALLO: I think, your Honor --

THE COURT: He says it is possible.

All right. Are you offering that as a defendant's exhibit?

MR. VASSALLO: If your Honor wants to break, I can use the recess to pare this down.

THE COURT: I want to finish with this witness.

We will take a brief recess, ladies and gentlemen. Don't discuss the case. You may withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: We will be in recess, gentlemen.

(Recess.)

(In open court - jury present.)

THE COURT: Please resume.

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(Defendant Gart's Exhibit G=1 was received in evidence.)

xxx

BY MR. VASSALLO:

Q During the recess did you speak with -- to your attorney, Mr. Powell?

A Yes.

Q Did you have any reference in your conversation to his letter to Mercury, dated May of 1965, which has just been introduced in evidence?

A No, sir.

Q Did you not give this answer or these answers to the following questions at your deposition, under oath, in this action?

MR. NEWMAN: May we have the page, please?

MR. VASSALLO: Yes, 126, beginning at line 16.

Q "My question is whether or not Mr. Powell's letter of May 3, 1965" to Mercury, "accurately described your conversations with him prior to that date in reference to the number of LPs which you would consider.

"A Yes, I would say yes.

"Q It does?

"A I would say yes.

"Q Is it your testimony, then, that prior to May 3 of 1965 you had told Mr. Powell that you would no longer be

inflexible on the two LPs aspect of the contract for what reasons?

"A Yes."

Did you give those answers to those questions under oath at your deposition in this action?

A Yes.

Q Beginning at page 127, line 11. Did you give these answers to these questions under oath at your deposition in this action:

"Q Up to the date that you received the Mercury draft and Mr. Powell saw it, it was left in the hands of Mr. Gart, was it not, to negotiate the terms of the agreement, was it not?

"A Yes.

"Q Mr. Powell's inspection came only after Mercury had drafted a written document including the terms which they had discussed with Mr. Gart, is that not true?

"A Yes.

"Q Is it not also true that you had informed Mr. Gart prior to informing Mr. Powell that you would consider changing the two LP terms in light of the advances or whatever, other considerations contained in the agreement?

"A Yes, it was possible.

"Q And is it not also true that during the period

that Mr. Gart was negotiating with Mercury he told you he might have to give on the two LP issue to get other advantageous terms?

"A Yes."

Did you give those answers under oath to those questions?

A Yes.

Q It was after the Mercury deal fell through for whatever reasons it did that you asked Mr. Gart to pursue possible interests on the part of Vanguard in signing Mississippi John Hurt to a recording agreement, is it not?

A Yes, sir.

Q And that was the first time he suggested to you that you inquire of Vanguard whether they were interested, is that not true?

A Yes, sir.

Q Is it not also true that after your first discussion about Vanguard Mr. Gart told you he had called Maynard Solomon was interested?

A Yes.

Q And did he not also tell you that Solomon wanted to sit down and discuss terms?

A Yes, sir.

Q And you accompanied Mr. Gart and I think you

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testified Mr. Hurt as well to Mr. Solomon's office at the very outset of the negotiations and discussed terms, did you not?

A Yes, sir.

Q You were present?

A Yes, sir.

Q And you told Mr. Solomon all of the terms you were insisting be included in thecontract or any contract, isn't that true?

A Yes, mostly.

Q Did Mr. Solomon tell you what terms he would insist go into the deal?

A Well, he said that he would send --

Q Answer my question yes or no. If you cannot, tell me, and I will try to reframe the question or give you an opportunity to enlarge on your answer.

Mr. Solomon during that meeting did make some contributions, did he not, as to the terms he would insist on for his company?

A Yes.

Q Okay, and at the end of the meeting you asked that he draft an agreement incorporating what you had discussed, did you not?

A Yes.

Q And Gart was sitting there and aware of this conversation, correct?

A Correct.

Q And he made contributions, did he not?

A True.

Q In fact, it was his expertise which moved you to bring him there to begin with?

A That's right.

Q And you deferred to his judgment on any number of things, did you not?

A TRue.

Q And then you sat down with Mr. Gart, after he told you he had received the contract that you had asked Mr. Solomon to prepare, is that not correct?

A Yes.

Q And it was a form contract on the letterhead of Vanguard Recording Society, Inc., was it not ?

A Yes.

Q And that is the agreement that you call the sample and that there was so much debate about which you and Mr. Gart went over line by line, paragraph by paragraph, at his office, is that not correct?

A Yes.

Q And it was Mr. Gart and not you who took notes on that occasion as to what revisions you would insist on

on with Mr. Solomon, is that not true?

A Yes.

Q In his handwriting?

A Yes.

Q And you asked Mr. Gart then to convey your comments on the contract to Mr. Solomon, did you not?

A Yes.

Q And you learned that he did so, did you not?

A Yes.

Q And thereafter I believe it is in February -- withdrawn.

This meeting at Mr. Gart's office where you made a line by line review of the Vanguard contract occurred when or approximately when?

A Probably November or December of '65.

Q November or December. A couple of months later you went to the first recording session under the auspices of Vanguard of Mississippi John Hurt's music, is that not correct?

A That's correct.

Q And at the session you even discussed with Mr. Solomon song titles which might be included in the first Vanguard release of Mississippil John's music, is that not correct?

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A Correct.

Q And he even asked you if you would be offended if they released songs which your record company Piedmont had released years earlier?

A That's correct.

Q And you gve him permission with the exception of one title?

A That's right.

Q Is it not also true that before that recording session in February of 1966 you had a further meeting with Mr. Gart at his office?

A Before the session?

Q Yes, before the session.

A But after --

Q But after the line by line review.

A Well, yes, but --

THE COURT: It is a simple question. Were you in Mr. Gart's office?

THE WITNESS: Yes.

Q You spoke with him on that occasion about the Vanguard deal, didn't you?

A Right.

Q And didn't Mr. Gart tell you on that occasion in substance that he had gone over the revisions that you and

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he had discussed at his office with Mr. Solomon; that those revisions had been incorporated in a revised agreement and that he had signed it and sent it back to Maynard Solomon?

A No.

Q He didn't?

Did you give these answers to these questions under oath at your deposition in this action --

MR. NEWMAN: Page number?

MR. VASSALLO: Page number 146, beginning at line 8:

"Q You testified earlier about a conversation with Mr. Gart which preceded the first recording session given by John Hurt for Vanguard in which Mr. Gart related to you that Vanguard was anxious to get Hurt into the studio because he was an old man and wanted to go home and they wanted to get some product.

"Do you recall that conversation?

"A Yes.

"Q And you recall testifying that in that conversation Mr. Gart told you that Vanguard as a token of good faith had actually issued the checks to Hurt that were payable on the signing of the agreement?

"A No, they were actually in Herb Gart's hand and

either Herb Gart gave them to me and I gave them to Hurt or Gart gave them to Hurt.

"Q Where was this conversation conducted?

"A In his office.

"Q Here in New York?

"A Yes.

"Q Didn't Mr. Gart tell you in that conversation that the agreement which was prepared by Vanguard had been signed by John Hurt and himself and Vanguard, that they were given back to Vanguard after several revisions were made; that Solomon would sign it on behalf of Vanguard and send you the agreement to sign?

"A I don't believe so.

"Q Are you certain?

"A No.

"Q You're not certain?

"A I'm not certain."

Did you give those answers under oath to those tquestions in this action?

A Yes, sir.

Q You were not certain whether you gave this deposition as to whether Gart did or did not inform you that a revised Vanguard agreement had actually been signed?

A That is not what I wasn't certain about.

Q Were you certain on that issue when you gave your deposition?

MR. NEWMAN: Your Honor, I must object to this.

THE COURT: Overruled.

Answer the question.

A My answer says that I was not certain.

Q Were you certain or not certain when you gave your deposition in this action in 1974 as to whether or not Mr. Gart had informed you that he had signed a revised agreement and sent it back to Vanguard after the revisions were made so that Solomon could sign it on behalf of Vanguard?

A I do not recall Herb Gart ever telling me that he had signed any agreement.

Q Are you able, under oath, to testify unequivocally about that day to this jury?

MR. NEWMAN: Your Honor, I object.

THE COURT: Yes, I will sustain the objection to that.

MR. NEWMAN: Your Honor, there are two lines that have not been read.

THE COURT: You will have redirect examination if we ever get to it.

Q Is it not true that you never inquired of Mr.

Solomon in July of 1966 about when you could expect to receive a contract from Vanguard for your signature?

A Yes, I did inquire of him.

Q In July of 1966?

A I believe so.

Q And in July of 1966 you still expected to receive for your signature a contract from Vanguard?

A I was.

Q Hadn't you received in the prior month on June 10th of 1966, a letter from Sanford Ross, an attorney, telling you that Mississippi John Hurt had entered into an exclusive recording agreement with Vanguard and that Vanguard was the only company who owned the exclusive rights to his recording services?

A I did receive that letter.

Q Yes or no. Did you?

A Did I receive it?

Q Yes.

A Yes.

Q And didn't that same letter tell you that Mr. Ross was advised by Vanguard that Vanguard was prepared to take legal action to prevent anyone else, including Music Research, from releasing Mississippi John Hurt's music?

A Something to that effect, yes.

Q Something to that effect. Didn't Mr. Ross demand that Music Research deliver to his office all the tapes of Mississippi John Hurt's music which Music Research had in its possession?

A He even demanded they be returned to his office where they had never been.

Q That was the word he used. You remember that from the letter, correct?

A Correct.

Q After the receipt of that letter telling you in substance that Vanguard would sue you if you didn't deliver your tapes to Ross' office, you still inquired of Maynard Solomon some month later when you could expect a contract for your signature?

A I did, and he --

Q I am just asking that you answer my question.

THE COURT: He says he did.

MR. VASSALLO: Your Honor, I offer in evidence as Defendant Gart's Exhibit, Plaintiff's Exhibit 31.

THE COURT: That is the Ross letter.

MR. VASSALLO: The Ross letter marked in the pretrial proceedings. May I have 31?

THE COURT: Received to show that the letter was sent and received. Not as evidence of the truth of any

of the statements therein contained, merely to show that this witness did receive that letter and what it said to him in the letter.

All right, let's move along. They can look for a copy later on.

Do you have anything else?

MR. VASSALLO: Just very, very briefly.

(Defendant Gart's Exhibit G-2 received in evidence.)

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Q For the remainder of 1966 and all of 1967, '68, '69 and '70 you had no further conversations with Maynard Solomon or anybody else at Vanguard concerning the whole subject of a contract or who as between you was entitled to the recording services of John Hurt -- correct?

A Correct.

Q And you, during that five year period under your Piedmont label or otherwise, did not release to the public any further John Hurt recordings, correct?

A That's correct.

Q And in fact, during those years, '67 through '70 Vanguard released its albums to the public of the Mississippi John Hurt music, did it not?

A Yes, it did.

THE COURT: We know that. All of us in this

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room.

Q Did you protest the release of either of those albums?

A Not the first two, no.

Q Did your attorney, Mr. Powell?

A No.

Q In fact, you entered into an agreement with Adelphi, your co-plaintiff in this action, in 1970, giving it the right to release the music contained on the tapes which Mr. Ross demanded be returned to his office, correct?

A That's correct.

Q And did you tell Mr. Rosenthal or his company, Adelphi, that you had received a letter from Mr. Ross in 1966 threatening to sue anyone who exploited John Hurt's music?

A I believe he was --

THE COURT: Yes or no, did you tell him?

TEH WITNESS: I believe so, yes.

Q You believe you did? Did you tell him that Vanguard claimed to have an exclusive recording agreement with Mississippi John Hurt?

A No, I did not.

Q Did you give these answers under oath to these questions at your deposition in this action. Page 91,

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beginning at line 23:

"Q By the way, did you tell Mr. Rosenthal when Music Research made its agreement with Adelphi about this peculiar background with Music Research and John Hurt that you received a letter from Sanford Ross which stated there was an agreement in existence between Vanguard and Hurt?"

There are some objections, and colloquy.

"A Mr. Rosenthal" --

THE COURT: Was there an objection to that question?

MR. NEWMAN: There was, your Honor.

MR. VASSALLO: It was reframed to satisfy counsel.

THE COURT: Read the reframed question. Don't read anymore questions like that. The members of the jury will disregard that question that has been read. Strike it out. Let's go forward.

MR. VASSALLO: I will reframe the question as it was put by colloquy to the witness. I will do that with counsel's permission:

"Q By the way, did you tell Mr. Rosenthal when Music Research made its agreement with Adelphi about this background of Music Research and John Hurt that you received a letter from SAnford Ross which stated that there was an

agreement in existence between Vanguard and Hurt?

"A Mr. Rosenthal asked me did Music Research in fact have a right to Mississippi Hurt's music then. I said yes and I showed him our contract. He said, 'Is there any other contract?'

"And I said 'No.'

"Q Did you tell him that a New York attorney had in writing told you that there was an agreement between Vanguard and Hurt?

"A I don't think so. I don't recall."

Did you give those answers to those questions under oath?

MR. NEWMAN: This is the third time that he has not completed and I have to go back and reconstruct --

THE COURT: The complete answer is to be read.

MR. VASSALLO: There are two more questions and I will be glad to ask them:

"Q You don't recall whether you told Adelphi that Music Research had made this agreement?

"A I don't believe I mentioned it, no. I might have."

Did you give those answers under oath at your deposition?

MR. NEWMAN: There is still more.

THE COURT: I think you might as well save time by reading it all.

MR. VASSALLO: I don't know what this man wants me to read. I will read as much as he wants. Tell me what you want and what page and line you want me to conclude with.

THE COURT: That's enough, go on to something else.

MR. NEWMAN: I would like to read page 94, line 5.

MR. VASSALLO: All right:

"Q Did you tell him that a New York attorney had purported to rescind John Hurt's agreement with Music Research some time in 1966?

"A I may have, but I don't recall.

"Q Did you tell him that Mr. Ross had threatened that if Music Research had released any music of John Hurt's that they would be held to account and that the appropriate legal action would be taken?

"A I don't believe so because Mr. Ross never responded to our requests for documents.

"Q You didn't tell him that Mr. Ross had in June of 1966 threatened to take legal action if Music Research released any of the musical recordings of John Hurt's, is

that correct?

"A I'm not certain."

Did you give those answers to those questions under oath at your deposition?

A Yes.

MR. VASSALLO: I have nothing further, your Honor.

THE COURT: Let's have the redirect.

MR. NEWMAN: First, your HOnor, I would like to supplement certain of the questions and answers that were asked --

THE COURT: You may read any question and answer and ask him if he recalls giving that testimony on his deposition. Go ahead and read them. Give the line and page so your adversaries can follow it.

REDIRECT EXAMINATION

BY MR. NEWMAN:

MR. NEWMAN: I am referring to page 149, I believe, line 22. I have to orient the jury.

THE COURT: No, you don't.

Do you recall being asked this question and giving this answer on your deposition.

Q Do you recall being asked this question and giving this answer:

"Q You asked John Hurt about it. He denied having

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signed the agreement?

"A I never asked him about it.

"Q At no time before his death?

"A No."

Do you further recall supplementing --

MR. VASSALLO: I object to the narrative, your Honor.

THE COURT: Yes, but if he made a correction in the transcript that correction may be read.

MR. NEWMAN: The correction reads as follows and I would ask him whether he made this correction. The correction is in the form of an affidavit annexed to the deposition.

It says he deposes and states to the best of his knowledge and belief paragraph 15, at various places in this deposition and particularly in my testimony at pages 147 --

THE COURT: Just a moment, hand me in that affidavit. You mean he has fifteen paragraphs in there?

MR. VASSALLO: I have never seen the affidavit, your Honor.

THE COURT: Hand it to me.

(Handed.)

THE COURT: Objection sustained.

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MR. NEWMAN: I believe counsel was served with this, your Honor.

THE COURT: I don't care. I am sustaining the objection. Go on to something else.

Q There was reference made --

THE COURT: No speeches, just ask him a question.

Q What were the terms of the settlement that you reached with the Spottswoods?

A The Spottswoods --

MR. CONCAGH: Objection.

THE COURT: Overruled. Any objection any one of your makes will inure to the benefit of the other. Both are overruled. Go ahead.

A The Spottswoods returned all of the assets and property of the corporation including their stock in the corporation plus the sum of $5,000.

Q The assets included what?

A Contracts, tapes, metal parts, jackets, paper, advertising, everything the corporation owned.

Q Those included the John Hurt tapes?

A Yes.

Q Was Mr. Gart an employee of Music Research?

A No.

Q Was he ever paid any money by Music Research on

its behalf?

A No.

THE COURT: Who if anybody did pay him?

THE WITNESS: He was paid out of John Hurt's performance fees ten percent.

THE COURT: Out of John's half of the fees under your agreement?

THE WITNESS: Well, in a matter of practice John was getting all of the fee.

Q Was Herb Gart supposed to close and sign the deal with Vanguard on your behalf?

A Absolutely not.

Q Was he supposed to sign on your behalf?

A No.

MR. CONCAGH: I object.

THE COURT: Sustained. STrike it out.

Q What was Herb Gart supposed to get out of Vanguard --

MR. VASSALLO: Objection.

THE COURT: Sustained as to form.

Q Was Herb Gart supposed to get anything?

MR. VASSALLO: Objection.

THE COURT: Sustained. He may testify as to what he said to Mr. Gart and what Mr. Gart said to him and

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any papers that they had between them that they exchanged, but he cannot give a conclusion as to what he was supposed to get.

Q Pursuant to the discussion that you had with Mr. Gart --

THE COURT: Ask him what did he say to Mr. Gart about money.

Q What discussions did you have with Mr. Gart, if any, concerning what Mr. Gart was supposed to get out of the Vanguard contract?

MR. VASSALLO: Objection to the form.

THE COURT: I will let him answer.

A Herb said that he would be willing to do it, do the negotiations between Music Research and Vanguard because he was interested in John Hurt's career and well being. He was also interested in seeing that Music Research got a good shake out of it and as far as he himself getting any possible monies out of it, it would be in the form of increased booking fees as John, John being on a major lable, would tend to make his performance price higher and that was all that Herb was seeking to get out of it.

He essentially did it for nothing.

MR. CONCAGH: I object to the witness' characterization of the motivations of Herb Gart.

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THE COURT: No, he is supposed to be telling me what Mr. Gart said. I ruled he could be asked that and not what Mr. Gart's motivations were, but what he said his motivations were and I understand that this is what Mr. Gart told this witness.

MR. CONCAGH: May I have the right to re-inquire on that?

THE COURT: Yes, certainly.

If it is other than that, I will strike it out.

Q In those discussions that you were just referring to, Mr. Hoskins, what was said, if anything, about what you were supposed to get out of the Vanguard contract? You meaning Music Research.

A Well, it was discussed between Mr. Gart and myself that the advance monies and royalties would go to John Hurt as opposed to going to the corporation.

In other words, this two-record deal was being negotiated essentially for John Hurt's benefit as far as immediate monies were concerned.

MR. CONCAGH: Your Honor, I am going to have to object because the witness is wandering, I feel.

THE COURT: I will overrule the objection. Don't make speeches. Just take your objection. He has answered already in any event.

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Q Was there anything else further said in the conversation you're talking about with Herb Gart regarding the value of your record library?

A Yes.

MR. CONCAGH: I object to this as being asked and answered.

THE COURT: I thought it had been, but I will allow it once more just so the jury can have it in mind.

MR. NEWMAN: Thank you.

A What was discussed --

THE COURT: Did he say something. If so, tell us what he said.

A He said that by making the contract for two records and for a two-year period with the one year automatic extension, it would limit Vanguard to putting out two records over a period of three years after which time Music Research, Inc. would then be able to utilize the material that we had recorded in our vault tapes there such that after three years with Vanguard putting out two records in that time, that after that we would be able to come back and put out as many records of John Hurt as we had material to do so in our vaults.

Q Mr. Hoskins, did you clip your name off this Vanguard contract?

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A No.

Q There was mention --

THE COURT: No, just ask a question. Don't give us any summations.

Q The dialogue that was included in the twenty-five hours of tape, who in addition to yourself participated with John Hurt in those dialogues?

THE COURT: That's all on the logs that are in evidence, isn't it? That is not proper redirect. Let's go on to something else.

Frame the next question, please.

MR. NEWMAN: I am just about to, your Honor.

THE COURT: You had better hurry or I am going to direct you to sit down.

Q Do you know the size of Mercury Records as opposed to the size of Vanguard Recording Society?

MR. CONCAGH: Objection.

THE COURT: Sustained.

MR. NEWMAN: I would like to complete the answer given by the witness --

MR. CONCAGH: Objection to the comment.

THE COURT: Strike out the comment.

Do you recall being asked this question and giving this answer.

Q Do you recall on page 147 of the deposition which you gave, being asked this question and giving this answer:

" Q And if - -

"A I don't recall Herb Gart ever telling me that he had John Hurt sign anything.

"Q But you're not certain?

"A No, I'm certain that Herb Gart never told me that he had John sign any kind of contract.

"Q You're certain of that?

"A Yes, I'm certain of that."

Exhibit -- I believe 31, the letter from Ross to you, and you answered or caused that letter to be answered, did you not?

A Yes.

Q In what way?

THE COURT: Is there an exhibit? Offer it in evidence.

MR. NEWMAN: It is already in.

THE COURT: Offer the answer

MR. NEWMAN: The answer was over the phone. I am trying to elicit that.

THE COURT: I thought you were talking about an answer to a letter.

MR. NEWMAN: The answer was by phone.

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THE COURT: We had that before, didn't we, yesterday? He had his man call up and he stood there and listened to one side of the conversation. I think the jurors all remember that.

MR. NEWMAN: Thank you, your Honor.

THE COURT: All right.

Anything else for this witness?

MR. CONCAGH: I have two questions, if I may. I found something I was looking for.

THE COURT: No speeches, just ask him the question.

RECROSS EXAMINATION

BY MR. CONCAGH:

Q Mr. Hoskins, when you referred to your conversation with Mr. Gart in these tapes, this vault tape, they weren't all the tapes that you have here in court today, were they?

In other words, you acquired some over the course of the years after you had this covnersation with Mr. Gart, isn't that correct?

A That is mostly the bulk of them.

Q You acquired more tapes since your conversation with Mr. Gart in 1965, isn't that a fact?

A I have acquired physical possession of tapes

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that had already been recorded, but stored with other people. No further tapes had been recorded.

Q Have you acquired any further recordings that you didn't have in 1965 since 1965?

A Yes.

Q That's all I asked you, sir.

A Yes.

Q Do you remember on your deposition, page 111, line 9, being asked this question ad giving this answer:

"Q What did you do prior to that?

"A Go to school, worked for a bank, I had worked as a motorcycle messenger, as a guitar repairman."

Was that a fact that you gave that answer to that question in 1964?

MR. NEWMAN: Objection, your Honor.

THE COURT: I don't think this is proper recross. I think he has told us about his career in sufficient detail.

MR. CONCAGH: It is not recross. It is part of my cross, but I didn't have the page.

I have no further questions of this witness.

MR. VASSALLO: I have none, your Honor.

THE COURT: Do you have anything further?

MR. NEWMAN: No, your Honor.

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THE COURT: You may step down.

(Witness excused.)

THE COURT: Call the next witness.

MR. DAVIDSON: Your Honor, we call Eugene Rosenthal.

E U G E N E R O S E N T H A L, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIDSON:

Q Mr. Rosenthal, are you presently employed?

A Yes, I am.

Q What is your occupation?

A I am president and general manager of Adelphi Records, Inc.

Q How long have you held this position?

A Since the inception of the corporation. It would be five years.

Q Prior to that?

A I was the manager of Adelphi Studios and Distributors, the predecessor to the corporation known as Adelphi Records.

Q For how many years, Mr. Rosenthal, have you been involved in the music business?

A Approximately eleven years.

Q Will you describe briefly the areas in which you have been involved?

A Yes.

I have been a recording engineer, a music producer.

THE COURT: You, yourself, he is asking about.

A Phonograph record distribution, retail sales, motion picture work.

Q With respect to the production aspects of the business, Mr. Rosenthal, do you have any personal experience?

A Yes, I am a qualified producer.

Q Have you done any production work per se?

A Yes, we do all of our own productions for Adelphi Records and we also do independent productions under our production wing, which is known as Black Dog Productions.

Q Black Dog Productions is part of Adelphi, is that what you said?

A That's right. It's the production wing of ADelphi Records.

Q Do you ever do production work yourself for other people?

A Yes, quite often.

Q For whom have you done production work?

A Numerous record companies, individuals, all types of music.

Q With respect to the distribution end of the business, do you have personal experience in that?

A Yes, I have been in the distribution business for ten years.

Q Is Adelphi Records -- strike that.

Does Adelphi Records distribute records?

A Yes, we represent seventy-five record labels in the Baltimore, Washington, northern Virginia areas.

Q What functions do you perform for them?

A We represent them to all the local retailers, the chains. We are their official franchise dealer for our particular franchise territory, which is the tri-state area.

Q Does Adelphi Records actually sell records?

MR. CONCAGH: I object as a leading question.

THE COURT: It is leading. I think he has told us what they do. You do sell records, don't you?

THE WITNESS: Yes. We have a split function. Adelphi Records also does distribution in the Washington market, we are selling to retailers. Adelphi Records also has a distribution network for the records that it produces under its own label and in those circumstances we would be

selling to distributors around the country in other geographic areas.

THE COURT: You're selling at wholesale?

THE WITNESS: That's correct.

THE COURT: All right.

Q With respect to this production and distribution what types of music are involved?

A All types. As a distributor we represent, as I said, over seventy-five labels, which encompass the full scope of modern music with the possible exception of classical music; rock, country and western, blue grass, mountain music, blues, jazz, folk, all areas.

Q Could you give us a little bit of your educational background?

A Yes, I am a high school graduate. I have six years of college education, two years of electrical engineering, an associates degree in general education with a philosophy and science sequence and two years of study in sociology.

Q I will ask you to speak up, Mr. Rosenthal.

A I will try to speak louder.

Q Are you acquainted with Thomas Hoskins?

A Yes, I am.

Q When did you first make his acquaintance?

THE COURT: Is that relevant on this case?

If he has known him since childhood, I don't think it is relevant.

Q Did there come a time when your company did business with him?

THE COURT: That is admitted to. The contract is in evidence.

MR. DAVIDSON: It has already been offered, your Honor.

THE COURT: All right.

Q Did you ever record any Piedmont artists?

A Yes, I did.

Q Which ones?

A I recorded Mississippi John Hurt and Skip James in 1964.

Q In June of 1970, when Adelphi entered into the agreement with Music Research, were you aware that Vanguard released recordings of John Hurt?

A Yes, I was.

Q Did you make any inquiries on or about June of 1970 with respect to the Vanguard recording?

A Yes, I did.

Q What were the substance of those?

THE COURT: First, who did he make them with?

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Q Who did you inquire of?

A I inquired of Mr. Hoskins, the president of Music Research, and Mr. Talbot, the secretary of Music Research, as to what the situation was vis-a-vis the Vanguard records and I was told at that time that --

MR. CONCAGH: I object.

THE COURT: Sustained.

Q What was the substance of any conversations which you had regarding this matter? Who said what to whom?

THE COURT: I have sustained an objection to that line of inquiry. Hearsay and not binding on these defendants. You're talking about a conversation at which nobody from Gart's office or from Vanguard was present. Am I correct in understanding that?

MR. DAVIDSON: Yes, sir.

THE COURT: The objection is sustained.

Q Was there any action undertaken with respect to the 1970 agreement that you had entered into?

A Yes.

Q What action was taken?

MR. CONCAGH: I object at this point, your Honor. If counsel is attempting to get around the last area--

THE COURT: If he made records under the 1970 agreement or released them, he may tell us so.

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MR. CONCAGH: It is so broad.

THE COURT: Tell us what you did in pursuance of that agreement. Did you sell any records, did you make any records, what did you do?

THE WITNESS: We solicited tapes. We solicited photographs for production of the albums. We inventoried and graded all of the Music Research vault material. We started doing lay-outs and design for the album. We had color photos for the covers and back liners chosen.

We had certain expenditures for duplicating tapes from the Library of Congress. We spent a lot -- most of the time and effort in sitting down and listening to the material and deciding sequencing for the albums.

That is pretty much what we did.

Q Did you have any correspondence with any third parties relating to this album?

A Several, yes.

MR. DAVIDSON: At this time I would like to offer in evidence, your Honor, certain exhibits which have been marked in the pretrial order.

MR. CONCAGH: I object as hearsay, unless it has something to do with what the Court instructed.

THE COURT: I will have to see the exhibits before I can rule. I will take them for the fact that he

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did them. What type of material are you talking about? Get them together and give them to the clerk. Which numbers?

MR. DAVIDSON: Mr. Newman has them.

The numbers on the pretrial order are 67, 74, 70, 41, 69, 77, 68, 65, 78, 76, 71, 72, 73, 64D, 64A, 66, and 64E.

MR. CONCAGH: Your Honor, I will concede that these letters were written to the addressee therein named and they were received in the ordinary course of business and they were written by Mr. Rosenthal.

THE COURT: Very well. All right. They are received to show the fact that they were sent and received and not to show the truth of anything set forth therein.

MR. CONCAGH: I am sorry, I would stipulate that they were written in the regular course of business by Mr. Rosenthal, but I would object to their being introduced into evidence as hearsay and self-serving statement to this witness.

THE COURT: I'm not taking it for hearsay. I'm not taking it for proof of any facts set forth therein. Hand them to the clerk so I can look at them.

They would be received merely to show that this is what Adelphi did in partial performance or looking towards performance of its part of the 1970 agreement. Is that what

they're offered to show?

MR. DAVIDSON: Yes, sir, your Honor, that is the point.

THE COURT: And nothing else.

Go ahead to something else if you can while I am looking at these.

MR. DAVIDSON: Yes, sir.

Q With respect to the 1970 contract, what type of record album was to be produced?

A The album to be produced was going to be a double LP set complete with many photographs, much liner copy describing John Hurt the man and his life.

It was going to be a memorial anthology, which is to say a cross section representing all of the facets of the man's recorded works, his music, interview material between John Hurt and Pete Seeger, various stories that John would be telling and these things were going to be assembled in a sequence where, for instance, John would be telling a story about Jesse James or Stakolie and then at the end of the story you would hear his song, Stakolie.

It was designed to be a comprehensive, very expensive superior kind of product.

Q What was its proposed retail price?

A Its proposed retail price was $9.95.

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Q Was there ever a change in that proposal?

A After the release of the Vanguard VSD 1920 "Best Of" album, I went and had a conversation with Mr. Hoskins regarding the inability of us to perform our contract.

MR. CONCAGH: Your Honor, the witness is going on to areas totally not encompassed by the question.

THE COURT: It may not be, but if there came a time and place where he told Mr. Hoskins that he couldn't perform his contract, I would take that testimony.

Just a moment, please, gentlemen. The exhibits previously offered will be received in evidence.

Q Did you ever have a conversation --

THE COURT: Wait just a moment. I am not taking these exhibits for the truth of the facts therein set forth, but merely as evidence that Adelphi sent and received these letters at or about the date that they were sent and received.

(Plaintiffs' Exhibits 76, 65, 64B, 64A, 64D, 64E, 73, 72, 71, 74, 70, 41, 69, 77, 68, 66, 67 and 78 were received in evidence.)

xxxxxx

THE COURT: You may continue.

Q Mr. Rosenthal, was that album released, the memorial anthology album?

A No, it was not possible to release it without

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incurring financial disaster in the face of the $5.95 Vanguard album.

Q Why wasn't the album released?

MR. CONCAGH: Objection.

THE COURT: I will permit him to tell why he didn't release the album. You may cross examine as to whether that is the reason he didn't release it or not.

THE WITNESS: As I started to say, I had a conversation with Mr. Hoskins about our inability to perform to the letter of the contract with the issuance of the Vanguard $5.95 double LP.

In point of fact, I had inquired as to what would happen if we did market our doublt LP $9.95 in competition with Vanguard and was told by reputable distributors and retailers that I would just take a huge financial loss. I would not be able to compete when you have similar product, similarly packaged, and one is for sale at $9.95 and one at $5.95, the consumer will obviously buy the less expensive package.

I talked to Mr. Hoskins about this and I said, "There's no way I can perform the contract the way it is stated where it is $9.95 list. There is a possibility that if we reduced the price to $7.95 we might be able to compete" and we then discussed it and it was decided that we should

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try that and we went ahead and made changes in our catalogues and had begun again to finish the completion of the product and at that point Vanguard issued a fourth album and that totally destroyed our market. That preempted all of our material and there was no point in any longer even releasing any album because at that point even $7.95 couldn't compete because there was no more new material. It would have been the same material in the bins in the competition.

At that point there was no course of action but this litigation to recoup our losses.

THE COURT: Did you tell him you wouldn't perform?

THE WITNESS: That we couldn't perform, that's correct.

THE COURT: All right.

Q Did you expect to earn profits on this venture?

A Certainly.

Q How much did you expect to earn?

MR. CONCAGH: Objection.

THE COURT: Sustained. No proper foundation.

Q Did you make any projections of your expected profits on this album?

MR. CONCAGH: Objection.

THE COURT: I will let him answer that if he did.

A Yes.

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THE COURT: Yes is the answer. Let's go forward.

Q What projections did you make?

THE COURT: Are these projections in writing?

MR. DAVIDSON: May I ask the witness, your Honor?

THE COURT: Don't you know? Don't you represent the plaintiffs here in this case?

MR. DAVIDSON: It is my understanding that these projections were not written.

Q Based on these projections, what did you expect to earn?

MR. CONCAGH: Objection.

THE COURT: Sustained.

Q Mr. Rosenthal, I am going to ask you --

THE COURT: No speeches. Just ask him a question. Don't tell him what you're going to do. Do it.

Q Assuming the state of the market in 1970 for blues material, Mr. Rosenthal, what could a double LP of John Hurt material selling for $9.95 expect to earn?

MR. CONCAGH: Objection. No proper foundation.

THE COURT: I will sustain it as to form, but if he has an opinion as to the volume of sales which could be made at a particular time, I will permit him to tell us that.

I think perhaps at this time I will excsue the jury for a luncheon recess.

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Members of the jury, don't discuss the case. Keep an open mind. We are going to resume the trial at ten minutes past 2. Please withdraw to the jury room.

(Jury left the courtroom.)

THE COURT: I would like to address a question to plaintiffs' counsel here just to make absolutely certain that I understand the contentions.

Is there anything that Vanguard did insofar as concerns Music Research, Inc., which was not sanctioned or authorized by Exhibit 57; if we are to assume that Exhibit 57 was a document created by the Gart Corporation either by actual authority or apparent authority.

MR. DAVIDSON: Yes, sir, our contention would be that the third album, even if Vanguard's contract is what it purports to be, doesn't fall within the confines of that agreement.

THE COURT: Where does it say in there that they cannot record the third album?

MR. DAVIDSON: It states, your Honor, in one of the paragraphs to that agreement that all recordings are to be made in studios and it also states that John Hurt is to approve all, I believe, all releases or all selections which --

THE COURT: Just cite me the paragraph you're relying on by number, if you will, please.

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MR. DAVIDSON: Paragraph 2, your Honor.

THE COURT: He only made one recording session in that famous hotel, isn't that right?

MR. DAVIDSON: I think he made two. One in the hotel and one later that summer in August or July.

THE COURT: I don't recall having received any evidence as to a later recording session.

MR. DAVIDSON: I believe Mr. Hoskins testified that he only attended the first, which was at the hotel.

THE COURT: "Designated by us," means "us" as Vanguard, isn't it?

MR. DAVIDSON: We will introduce evidence, your Honor, that it was not a studio in any event. It was a live concert so it is not even embraced within that.

THE COURT: What else is there that Vanguard did in this case which, assuming Exhibit 57 to be valid, was wrongful?

MR. DAVIDSON: Later on in that same paragraph it states:

"The musical compositions to be recorded should be mutually agreeable between you and us."

THE COURT: The thing is addressed to Mississippi John Hurt, as I understand it, so "you" is Mississippi John Hurt and "us" is Vanguard, if you read that paragraph.

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MR. DAVIDSON: Yes, sir, that's correct.

THE COURT: So assuming perhaps that Mississippi John breached his obligations to Music Research, what is there that Vanguard has done which is in violation of 57, other than what you have told me?

MR. DAVIDSON: Assuming the contract to be otherwise valid, the only paragraphs that we alleged in this contract that have been breached by the release of the third album, are those I have already mentioned in paragraph 2.

THE COURT: Namely, that it was not done in a studio designated by Hurt and Vanguard.

MR. DAVIDSON: There is also a term here, too, your Honor, which is in paragraph 18.

THE COURT: My copy says January 31, 1967. We all know that by that time Mr. Hurt was dead.

MR. DAVIDSON: Yes, sir, that's correct.

THE COURT: All right.

Have you responded fully to my inquiry?

MR. DAVIDSON: Yes, sir, to the best of my knowledge I have .

THE COURT: As to the co-plaintiff, Adelphi Records, Inc., they had no privity whatever with Vanguard. Their contract was entered into after this one?

MR. DAVIDSON: Yes, sir. That's correct.

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THE COURT: All right, we will be in recess until 2:20.

(Luncheon recess.)

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AFTERNOON SESSION

(2.35 p.m.)

(In open court - jury not present.)

MR. DAVIDSON: Your Hono r, I would just like to state the purpose of the testimony is to get in the issue of damages and how much the case would be reduced by the conduct of Vanguard and I confess confusion as to the nature of the objections voiced by counsel for the defendant and the third-party defendant.

I would like to inquire whether or not I could receive some guidance on the source of that objection.

THE COURT: I don't understand the question you are posing. As I understand it, some papers were offered of exchange of correspondence with customers and the like and I received all of them in evidence that he had that correspondence, but as to these defendants it is hearsay as to the truth of any statements therein. It does show that he was doing that business.

MR. DAVIDSON: I am not referring to that aspect of the examination. I am referring to the aspect in the examination with respect to the lost profits of Adelphi.

THE COURT: You asked him if he had a computation and it turned out he didn't have one. All he had

was some oral stuff he was going to give me and that wasn't responsive.

I would have thought he would have come in with computations of his cost of giving service and the markup on records and how many records he intended to sell and so forth.

MR. POWELL: He does, your Honor.

MR. DAVIDSON: Your Honor, he does have it.

THE COURT: How come he has it now and he didn't have it when he was on the stand this morning?

MR. DAVIDSON: I confess confusion with respect to your request because I thought that referred to the existence of documents. He had prepared a document prior to this trial.

THE COURT: If he has a document, he can tell how he prepared it and, if you offer it, I will rule.

I am shocked to learn that he answered the way he did this morn ing when he had a document all the time.

That is a question for the jury.

Bring in the jury, please.

Would you return to the stand, please.

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EUGENE ROSENTHAL, resumed the stand, having been previously duly sworn, testified further as follows:

THE COURT: What did you put in your pretrial order on damages?

MR. DAVIDSON: There is nothing in there about specific documents, your Honor.

THE COURT: Don't you know you are supposed to list all your exhibits? Didn't the Magistrate tell you this?

MR. DAVIDSON: These documents were not handed to me, nor were they prepared, until just prior to this trial.

THE COURT: All right.

(Jury present.)

THE COURT: You may resume.

MR. DAVIDSON: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. DAVIDSON:

Q Mr. Rosenthal, had any projections been prepared with respect to the profits which Adelphi expected to earn in the release of the proposed Memorial Anthology album?

A Yes.

MR. CONCAGH: I object on the grounds that it has been asked and answered.

THE COURT: Yes, I thought it was asked and answered this morning, but I understand that he has a paper.

You may continue the examination.

MR. DAVIDSON: Thank you.

Q On the basis of that document, do you have it with you, Mr. Rosenthal? I believe it has been marked as 90 for identification.

A Yes.

Q Can you identify the document for us?

A Yes.

Q Would you speak up, please?

A Yes. The document refers to the damages on our proposed album release number AD-1015. It is entitled "Damage Regards AD-1015, Mississippi John Hurt Memorial Anthology, Two-Disc Set, $9.95 List Price, $4.20 to Distributors."

Q Who prepared that document?

A I did.

MR. CONCAGH: I am going to object to this, Judge. May I see the document?

THE COURT: Yes, certainly. Haven't you seen

the document? By all means show it to him.

When was this document made?

THE WITNESS: I only put these figures together about a week ago, your Honor.

MR. VASSALLO: May that be read back, your Honor?

THE COURT: Yes, I will let the reporter read it back.

(Record read.)

MR. CONCAGH: I will object on the ground of the witness' answer.

THE COURT: I will overrule the objection. It is a matter which the jury can consider.

MR. DAVIDSON: I offer this document in evidence, your Honor.

MR. CONCAGH: Objection.

THE COURT: Let him look at it.

Go on to something else. He hasn't seen it today. I certainly wouldn't rule on it until they have had a chance to look at it.

Q Based on the projection you prepared, Mr. Rosenthal, would you tell us your conclusion with respect the profit you expected to earn from that album?

A Yes.

MR. CONCAGH: I object.

THE COURT: I will permit him to answer "Yes, he did", but the projection can't be given until the exhibit is received in evidence.

Q How much profits did you expect to earn?

THE COURT: I won't take that evidence until I have ruled on this projection.

Q Mr. Rosenthal, have you personally listened to the vault tapes that have previously been entered into evidence?

A Yes.

Q Will you tell us the definition of a vault tape?

THE COURT: We know that. It is a tape that somebody has in their vault.

Is there any argument over what a vault tape is?

MR. DAVIDSON: No, your Honor.

THE COURT: Please move this case along.

Q Do you have any documents with you or prepared with respect to material that is in the vault tapes?

A Yes.

MR. CONCAGH: I object to this line of inquiry on the same grounds I objected --

THE COURT: I won't take any documents that he

has with him about the vault tapes which are not listed in the pretrial order in the absence of a specific showing or a need to introduce such evidence or an excuse for not having it in the pretrial order.

Q What is on the vault tapes, Mr. Rosenthal?

THE COURT: Didn't we hear that? Music, dialogue, songs. Don't we all know that?

MR. DAVIDSON: I am asking Mr. Rosenthal the basis for future questions is the valuation of the contents.

THE COURT: You said you listened to all of them?

THE WITNESS: Yes, sir.

THE COURT: Go on to something else.

Q How much purported issuable material is contained on those vault tapes?

A About 200 minutes. Approximately five long playing albums worth of material.

Q In 1970, Mr. Rosenthal, do you have an opinion with respect to the value of those vault tapes in 1970?

A Yes.

MR. CONCAGH: Objection, no foundation.

THE COURT: He can answer it "Yes".

Q What is that opinion, Mr. Rosenthal?

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THE COURT: There is no proper foundation as to how he got his opinion, how he formed it. Has he bought or sold such tapes before?

THE WITNESS: Yes.

THE COURT: Ask him.

Q Mr. Rosenthal, have you bought or sold any such tapes before?

A Yes.

THE COURT: For use in making records for public release?

THE WITNESS: Yes, your Honor.

THE COURT: Of the same type of music that is on these tapes?

THE WITNESS: Yes, your Honor.

THE COURT: All right, he may give his opinion.

Q What is your opinion with respect to the value of the vault tapes in 1970?

A It is my opinion of the value in 1970 was roughly $250,000.

Q Do you have an opinion with respect to the value of the vault tapes today?

A Yes, I do.

Q What is that?

A Maybe five to ten thousand dollars.

MR. CONCAGH: I object and ask it be stricken because the witness has shown on the record he is unable to tell by his answer "maybe".

THE COURT: I assume he is giving me an estimate. I will deny the motion to strike.

Q On what do you base this opinion with respect to the reduction in value?

A The issuance of the two Vanguard albums, Nos. 3 and 4, by Vanguard Records.

Q In what way did that issuance result in the reduction of value?

MR. CONCAGH: Objection, no foundation for this testimony, no connection.

THE COURT: I will take it for what it is worth.

A It used up the amount of material -- unissued material available for release. John Hurt died in 1966 and so what he had produced up to the time of his death was the total worth and the issuance by Vanguard of the equivalent of three albums, that is, a double album and a single, preempted from the finite amount available almost all of the issuable material.

THE COURT: You are telling us almost all of

what was on those tapes has been contained in these three albums?

THE WITNESS: Yes, your Honor. What I am saying, and I have actually analyzed title by title the preemption involved, we started with 90 titles total. Of the 90 titles that are in the vaults, roughly 10 to 15 are not issuable because of quality of performance or quality of recording.

In addition to that, there is another 20 titles of religious material and it is very difficult to package or release religious material by a blues artist in any commercial viable means.

So, only a very small percentage of the religious material could be combined with non-religious material, so already 30 titles are not usable.

You are really dealing with vault tapes of 60 usable titles of which Vanguard preempted a total of about 50 of the titles, of the usable original John Hurt material, things that could be attributed to the man's style or songs that he had written or songs that he had arranged and the issuance of the three final albums, the double set and the "Last Sessions" set, in effect, removed from the marketplace any more John Hurt material.

I actually did an analysis album by album of

how much was preempted by each issue of Vanguard and in the total vaults, as I say, after the removal of the usable -- of the unusable material, we come up with 80 titles and after the removal of most of the religious material there is just nothing left. There is no new material left, no previously unissued material.

That makes the value of the tapes at this point only archival or maybe of interest to companies that might combine it with other material in anthology, which is a very marginal market. Certainly nobody would now pay $250,000 for those tapes, although they would have in 1970 based on the market value which had not been pre-empted and the ability to combine those unpreempted titles with the religious cuts and with the marrative and the dialogue.

Also, you can't put out an album of dialogue. No one is going to buy an album of John Hurt telling stories. I won't say "No", there will be some few people who would have to have that in their collection, but from a commercial standpoint, a record company would not be interested in putting out John Hurt telling stories, although they would buy an album that has material that makes the narrative material understandable.

Taken in context, you can integrate John

telling a story that makes sense In sequencing with the music.

As I say, now what is left in the vault is dialogue, narrative, stories and religious material and, frankly, it is not very valuable material at this point.

Q Of the 25 hours of musical material, how much of it is dialogue?

A I would say about 20 per cent at the most.

Q Can you use that dialogue?

THE COURT: I think he already told us what he would do with that.

Q You stated in your opinion the value of the tapes in 1970 was $250,000. May I ask on what assumptions did you base that opinion?

A The opinion --

MR. CONCAGH: Could I have that date, please?

MR. DAVIDSON: 1970.

A My estimates of the value of the material at that particular point in time is based on projected sales potential, what the market potential was for John Hurt in 1970, what the market potential was for well packaged, well recorded material of John put together in a meaningful fashion based on five albums worth of material, which was my estimate of what was available to the Music Research

at that point in time.

As I say, I have listened to all the tapes and I know because I had already assembled five albums worth of tapes from them and based on my experience in marketing music, especially of the type of John Hurt's music, I projected, roughly, what the sales would be in a given period of time for four or five albums, including overhead, production costs, marketing expenses, promotion and I came up with net profit figures for each of five albums and the combined total was $254,000.

Q I notice you have a document, Mr. Rosenthal. Was that prepared in connection with your testimony about this?

A Yes, it was.

Q I believe that is marked as 91 for identification?

A 91.

MR. CONCAGH: Could I know when that was marked?

MR. DAVIDSON: This was marked physically just prior to his testimony.

MR. CONCAGH: Were you here?

THE COURT: I think the paper was marked before the jury came in. If this has to be discussed, I will

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excuse the jury. Why don't you wait until the direct testimony is finished?

MR. CONCAGH: Okay, Judge.

Q Mr. Rosenthal, you testified that $250,000 was the value of the material in your opinion in 1970 based on five records. At what price would you sell those records for in 1970, on what price is this figure based?

A This is based on two double LP's at $9.95 and a single at $6.95.

Alternatively, I worked up another figure for packaging it as five single LP's at $6.95. The total net profits vary by $4000, $250,000 for packaging it as two double LP's and a single and $254,000 if you packaged it as four singles. The difference in price is because you make a slightly lower profit margin on a double LP than if it were two LP's.

Q What type of album was your Memorial Anthology to be?

A It was to be an album of superior quality in terms --

Q What number of records, a single LP?

A The Memorial Anthology was a double LP.

Q So, your figure of $250,000 is based on sales of either two double LP's or five singles; is that correct?

A Two doubles and a single or five singles.

Q What would be the profit per record based on the projection that you have made?

A If it were in five single LP's, the net profit per LP would be about $54,000. I would have to check my figures.

Q Perhaps we could do it on a unit cost. Per record what would be the profit?

A The per record profit works out to $1.41 per LP disc if it is released as five single LP's. This includes, as I stated before, overhead is taken into consideration, production costs, royalties, mechanical licensing, pressing costs, printing costs. It is all enumerated in the document, but you have many one-time costs, that is, in the preparation of your tapes and the cutting of your disc lacquers, a certain amount for disc mastering studio time.

You have one-time costs in color separations, one-time costs in your metal parts and then you have ongoing costs as you press your records of per disc pressing rates of about 32 cents a disc and you have ongoing costs with your printing, ongoing costs with your jacket fabrication.

On single LP's the profit margin comes out to

$1.41 net. On double LP's the profit margin is $2.18 net per package sold.

Q That is total profit?

A No, there is another aspect. That is for national sales.

In additional to the national sales you have foreign sales, which is not based on your producing, but on your leasing material to cover overseas and that is taken into account in the total evaluation.

Q Has Adelphi Records any foreign leases with any companies?

A Not at this time although we do have many lease offers that have been tendered to us over a period of years that we haven't taken out because we are waiting for our catalog to get larger.

MR. CANCAGH: Objection.

THE COURT: I will strike everything after the word "No". The jury will disregard all the answer except the word "No".

(To the witness) Just answer the question.

Q Are you familiar with foreign licensing agreement?

A Yes.

THE COURT: He said he was. Let's go on.

Q Is your opinion based in any sense on the state of the market as it existed in 1970?

A Certainly.

MR. CONCAGH: Objection, leading, your Honor.

THE COURT: What good would an opinion be if it wasn't based on the market? The answer is obvious.

Q What was the state of the market in 1970?

A In 1970 we were just about at the peak. Let me rephrase that. The folk market, the folk idiom, was a boom period extending from the early '60s, about 1964, and tapering off by 1972.

You had one peak in '64-'65, '66 and a secondary peak in the years '69, '70, '71.

Right now, for instance, we are in a trough in terms of the marketability of blues material. For instance, folk material of the type of John Hurt, but in 1970 we were in a secondary peak in the marketing, almost the equivalent of the '64, '65, '66 period for this kind of material.

Q What is the state of the market today?

A I would say it is relatively low right this moment for the material and I would expect it to stay low at least for another five or ten years. These things tend to run in ten-year generational cycles.

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Another ten years will be another group of young people, for instance, who haven't ever been exposed to roots music, American folk music, who will show an interest and we might see a small secondary boom, but the problem with it is that given enough time, 15, 20 years, you run into a problem, a generational -- how can you ph rase it -- kind of a backlash situation where material that is 20 years old is passe and the chances for there being another folk revival or folk boom in my opinion is rather slight. I don't think we will see a '60s, a mid-'60s boom again for this kind of material. I think it is over. I think the material has now only archival value.

MR. DAVIDSON: Your Honor, that is all of the direct examnation.

CROSS EXAMINATION

BY MR. CONCAGH:

XX Q Mr. Rosenthal, prior to 1970 had you ever produced any record albums?

A Yes.

Q How many had you produced prior to that time?

A For my own label, Adelphi Records, about eight or nine or ten albums and for other companies another five or ten, I would say. These are productions that albums

were actually made out of.

Q Was Adelphi making albums itself or did they hire outside help to do it?

A No, we did all the production worki

Q On the nine or ten?

A Yes.

Q In gross sals, how many in number did Adelphi produce prior to 1970?

A I don't have the figures with me.

Q Would you approximate it, please?

THE COURT: I can't afford these delays. The witness is hesitating. Frame another question.

A It is very difficult.

THE COURT: You keep quiet.

Frame another question. We have to go along with this trial. I can't sit here while he looks at the ceiling trying to figure out an answer to a question of very slight relevance. Let's go forward.

Q Mr. Rosenthal, did you prepare any notes or memoranda regarding the value of the 25 hours of tape other than those documents you have brought to Court today?

A I had handwritten versions of the documents.

Q When did you make those handwritten versions?

A Over a period of several weeks, the past month or two, I would say.

Q Did you make any handwritten notes in 1970 about the production predictions of the record you say you were going to produce?

A Nothing on paper. In my mind.

Q Nothing on paper?

A That is correct.

Q Have you made any projections on paper about the new album you are going to put out after this lawsuit?

A What new album?

Q The new album that Mr. Hoskins discussed on his direct testimony. Weren't you here during his testimony?

A Yes.

THE COURT: Th is matter is getting out of hand. One at a time. You keep quiet and listen to the questions and give concise answers.

Go ahead and frame another question.

Q Did you bring any notes or did you make any notes about the new albums --

THE COURT: No compound questions, Mr. Concagh. You know better than that. Simple questions. Not did he bring any or did he make any. Ask him a simple question.

Q Did you make any notes about the new album Mr. Hoskins testified about on his direct testimony?

A No, I knew nothing about that album.

Q It was today in court for the first time you heard about this new album?

A Yes.

Q Did you speak to your lawyer about this case?

A I should hope so, yes.

THE COURT: I should hope so. I am not sure. Did you?

Go ahead.

THE WITNESS: Yes.

Q Did you take any notes?

A On what?

Q Did you give him notes on a yellow legal paper right before you took the stand this morning? Did you hand him something on a yellow legal pad?

A Yes.

Q What was that?

A I handed him this (indicating).

Q What else?

A And I handed him some Xerox copies of the tape logs because I wanted a copy myself.

Q Anything else?

A This morning, no, just what has already been submitted and these (indicating).

Q What are those?

A These are my notes on the present earnings of titles in the Music Research tape vaults. How many were released on Vanguard, one, two and three, and how many were released on Vanguard four and how these titles slowly eroded the titles available in the vaults.

Q Mr. Rosenthal, could you answer the question?

THE COURT: No, frame the next question.

Q Mr. Rosenthal, isn't it a fact that you entered into an agreement, Adelphi Records did, with Music Research where you paid an advance of $700 for what you claimed to be worth $250,000 today?

A That is incorrect.

Q That is incorrect?

A I paid an advance --

Q Is that incorrect?

A The way you have phrased it, your phrasing is incorrect, is inconsistent with what I said.

Q Do you have the document between Adelphi and Music Research, please, the contract? Did you and Music Research enter into a contract where you paid them an advance of $700?

A I did.

Q Is that the contract offered in evidence during this trial?

A It is.

Q Other than that payment to Music Research of $700, what costs did Adelphi Records incur in preparation for setting out what you called an anthology of Hurt's music?

A I believe you have all those documents, but basically --

Q I don't have all those documents. I am asking you to identify them.

A If they were presented to me, I could, yes.

Q Which documents are you talking about? They are your documents, aren't they?

THE COURT: One question at a time.

A I don't have the documents in front of me.

Q What documents?

A The documents about the costs that were incurred in our attempted production.

Q When were those documents made?

A At the time we were doing the production. You have them in your file.

Q Your attorney has handed me an agreement. Is

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this the document you are talking about?

A You are asking me what costs were incurred?

Q That is right.

A The first cost --

Q I am asking you, sir, about the documents. You say your attorney has documents that you prepared at the time. What documents are they?

A They are documents exhibiting expenditures that Adelphi Records --

MR. CONCAGH: I call for their production.

MR. DAVIDSON: All documents that were requested in the pretrial discovery have been produced.

MR. CONCAGH: I call for their production.

MR. DAVIDSON: They are marked as exhibits.

THE COURT: I am not going to slow down this trial while he gives you any papers marked in the pretrial order. Let's start moving along here.

MR. CONCAGH: I will come back to this, Judge.

THE COURT: Thank you. In the meantime, take them off the jury box rail and put them on the counsel table where they belong.

Q Mr. Rosenthal, when did you listen to these 25 hours of tapes?

A In 1970, early '71 they were listened to again.

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I also auditoned them prior to the signing of the contract to ascertain that there was, in fact, material that I wanted to contract for so it would have been in the six-month period prior to the 1970 contract.

Q Did you listen to them in one session?

A It is impossible to do it in one session.

THE COURT: Just answer the question.

THE WITNESS: No, many sessions.

Q How many sessions does it take to listen to them?

A Literally days. Probably it took me five days to listen to them through one time and I have listened to them several times.

Q This anthology you are talking about, what were the songs you were going to put out? The songs as opposed to the value.

A I don't have that document with me.

Q What document?

A I don't have anything I can refer to.

Q Is it that you forgot?

A It has only been five years.

Q Have you forgot?

A Stakolee, Frankie and Albert, Nobody's Dirty Business -- there's too many. You are talking about --

Q When you say "too many", would you tell us all you can remember that were so important?

A We were intending to issue all the songs not previously issued.

Q Would you tell us which they were?

A I can't tell you off the top of my head which they were.

Q Do you have notes as to which would refresh your memory as to what songs they were?

A Certainly.

Q Where are those notes?

A I believe they are the tape logs that I would need.

THE COURT: Speak up.

MR. DAVIDSON: Mr. Powell is handing up Defendant's Exhibit 1.

THE WITNESS: It will take me a minute or two.

THE COURT: It will not. If you have a list, I will mark it for identification and we will go on to something else.

Q May I ask when this list was made?

A The tape logs were made in 1970.

Q May I ask when this list was made?

A The tape logs were --

MR. DAVIDSON: Objection, already in evidence.

A There is no list.

THE COURT: He is asking about this list.

Mr. Concagh, you are asking the witness about a document.

MR. CONCAGH: I am asking him to use anything he can to refresh his memory.

THE COURT: He has some document in front of him. Have it marked for identification.

THE WITNESS: If you would like the titles, I can now give them to you.

THE COURT: Put the list in evidence. I will not waste time with you reading titles from the list. Put the list in evidence.

THE WITNESS: It is 92.

MR. DAVIDSON: It was marked 92 for identification.

THE COURT: Exhibit 92 for identification is received in evidence.

(Plaintiff's Exhibit 92 was received in evidence.)

THE COURT: Frame your next question.

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Q Mr. Rosenthal, will you tell the members of the jury what songs you were going to use in your anthology by

using the document before you to refresh your memory?

A Yes.

Hey, Hey, Honey Right Away --

THE COURT: Let me see that document, please.

All right, you may answer.

A Hey, Hey, Honey Right Away. Nobody Cares For Me. Good Morning, Miss Carrie. Let The Mermaids Flirt With Me. Trouble I've Had In All My Days. Shortnin Bread. Waiting For You. The Funky Butts. Farther Along. The First Shot Missed Him. John Turner Blues. Poor Boy Long Ways From Home. You Are My Sunshine. Talking Casey. Spanish Fandango. C. C. Rider. My Creole Belle. Sliding Delta. Avalon My Home Town. Salty Dog Blue. It Ain't Nobody's Business. I Shall Not Be Moved plus the John Hurt-Pete Seeger interview material and John Hurt's stories such as the Hoop S, The Panther Story, Artesian Well Story, a story about John cussing and praying.

Is that what you need?

Q Is that all?

A That is essentially all, yes.

Q Did you make a master of this list? Did you make a master recording?

A We were in the process of making it.

Q Do you know what a master recording is?

A I certainly do.

Q What is it?

A A master recording is a recording that you have gone from, well, there are two types.

There are actually three types of masters.

One is your raw master when you do your initial recording.

The second kind of master is a prepared master. That is a mixed master. If you are going from 16 tracks you would mix it down to two tracks for stereo configuration. If you have done your initial recording in two-track stereo, you might isolate the vocal in one channel and the guitar in the other channel and that is a raw master. Then you would mix it. For instance, it wouldn't sound realistic to have a record of John Hurt with his guitar over here on the left side and his voice on the right side so then you would mix it to a more meaningful separation.

Now, in dealing with vocal and guitar, I have found that the best configuration is about a 90-B channel separation. It doesn't sound unrealistic, but it does give you a spatial feeling to it.

This is the prepared master at mixing. In the

mixing process you might add things like reverberation. You might equalize the recording so that each cut, if they were done in different sessions, will sound of the same quality, of the same timbre.

You might for special effects add facing. You might, as we were going to do, use Berwin noise suppression if the tapes are old and you want to bring them up to current technological standards and use equipment to make a high quality master.

A third type of master is a master that is used in a disc mastering process where you go from your prepared master sequencing. You go to a lab. Here in New York you have one of the finest in the world called Sterling Sound, which we use quite frequently. You go in there with your prepared mixed master, prepared for album presentatio n and in there the final settings are done where they are actually cutting the disc on a hundred thousand-dollar lathe into a wax impression, actually a lacquer impression. There you have a final mastering process.

That is a lacquer master.

There is even one further variation of a lacquer master in the metal processing. You coat your disc with a fine gold or silver compound as the first step

in your plating. There is also referred to as a master, although it is not a tape master, it is a metal master. Does that satisfy your request?

THE COURT: Don't you ask questions. Just answer them the best you can.

Q Isn't it customary to use the term "master" for a mixed master?

A Yes, that is the most common usage.

Q That is what people in the industry mean?

A That is correct.

Q Did you ever make a master, yes or no?

A Yes.

Q Do you have it?

THE COURT: You mean of John Hurt?

MR. CONCAGH: Yes.

A Yes.

THE COURT: Did you ever make a master of John Hurt?

Q Do you have it?

A I may -- let me see -- I made equivalent master dubs for Music Research in 1965 -- in 1964 from the materials that we recorded, I supplied them mixed master dubs that they would hear what the material would sound like.

Q Didn't you just agree that there is a term used in the music industry called a master and you referred to it as mixed master?

A Yes.

Q Did you ever make a mixed master for Mississippi John Hurt's music that was going into this anthology?

A It never reached that stage.

Q Mr. Rosenthal, would you answer that question yes or no.

Did you ever make a master for the Mississippi John Hurt anthology?

A No, I don't believe I did.

Q Do you have doubts?

A Frankly, with all the work that we were doing --

THE COURT: I hope you are frank in all your answers.

Did you do it or didn't you do it?

THE WITNESS: I can't remember whether we did not start the mastering process.

Q Did you make a master, Mr. Rosenthal?

A To the best of my knowledge, no. I can't be more precise.

Q You are here giving us the best of your knowledge about everything, aren't you?

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THE COURT: All right, you have five minutes to conclude the cross of this witness.

MR. CONCAGH: I will take that to run through some notes.

THE COURT: Get finished with him. I am not going to have any more of these long-winded explanations that don't have anything to do with this case. Let's move along.

Q Did you have any conversation -- I will withdraw that.

MR. CONCAGH: No further questions.

THE COURT: How about you?

MR. VASSALLO: I will be very brief.

CROSS EXAMINATION

BY MR. VASSALLO:

Q In June of 1970 your company licensed from Music Research the entire vault inventory of Mississippi John Hurt, correct?

THE COURT: I think we all know that. The document is in evidence, isn't it? Isn't that so? Do you dispute that?

MR. VASSALLO: I can't figure out what the agreement means, your Honor.

THE COURT: Then you may ask the question.

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MR. VASSALLO: I find it thoroughly ambiguous.

Q What was your company licensing from Music Research when you entered into Plaintiff's Exhibit 11, the agreement between Adelphi Records and Music Research, dated June 8, 1970?

A That agreement is a contract for the production of one double LP set to be entitled "The Mississippi John Hurt Memorial Anthology" and to derive the masters for that set we had access to the total Music Research vault tapes from which we were to select enough material to put out this double LP set.

Q You access to the entire $250,000 inventory?

A That is correct.

Q In addition to the $700 advance, which you paid to Music Research, how many sales of the records which you had made from this $250,000 inventory did you guarantee Music Research would be accomplished by your distribution or production of the recording?

A We guaranteed $2500, $2500 in the first year to Music Research.

MR. VASSALLO: I have no further questions, your Honor.

THE COURT: Any redirect of this witness?

MR. DAVIDSON: Yes, sir.

REDIRECT EXAMINATION

BY MR. DAVIDSON:

Q Of the five albums which would have been brought out in 1970, what would be the estimated market life of these albums?

A In 1970 I would say each album would consume its major life in the first three years and then it would have an ongoing residual catalog life of up to five to seven years. It is difficult to say. It would be based on the sales in the first year or two, how much market saturation and market penetration you made initially.

Q The profit projection you made, physically, how many albums in number is that based upon?

A I projected sales on the albums at about 35,000 pieces. That is maximum, complete catalog sales.

Q In 1970 was Adelphi capable of producing that number of records?

A Yes, it was.

Q In 1970 was Adelphi capable of distributing that number of records?

A Yes, it was.

MR. DAVIDSON: I have no further questions.

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THE COURT: Anything else?

MR. CONCAGH: Nothing else.

MR. VASSALLO: Nothing, your Honor.

THE COURT: Step down.

(Witness excused.)

THE COURT: I am going to excuse the jury right now and I will take an offer of proof as to what this next witness is going to tell us.

Members of the jury, take a brief recess.

(Jury left the courtroom.)

THE COURT: Would you be kind enough to stay on the other side of that door, Mr. McLynn, for just a minute.

Give me an offer of proof.

MR. NEWMAN: Mr. McLynn is a retailer and owner of two retail record stores in Washington, D.C. His record stores are among the leading seminal important record stores in this industry of folk and pop music.

He will testify that he has heard the tapes in the vault. They compare favorably with the Vanguard and Piedmont public issued albums.

He is also familiar with the market and he can testify as to how many of the music research tapes would have been sold had there not been the issue by Vanguard of

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the th ird and fourth records.

THE COURT: Don't you have any more witnesses on liability?

MR. NEWMAN: Your Honor, this is the problem: We have experts who have come here from Washington. For example, another expert who is here and we heeded your Honor's instructions to speed things along.

THE COURT: All right, I will take him after the recess.

(Recess.)

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(In open court, without the presence of the jury.)

MR. CONCAGH: I object to what this witness is supposed to testify on the grounds that he has no authority nor does he have any expertise in the area that he is supposedly going to testify on.

THE COURT: He is offered as an expert and you may have a limited voir dire as to his expertise, but as I understand it they reserved the right to call experts and he is one of them and he is from out of town and he wants to go home. He has been waiting a while.

Bring in the jury.

(Jury present.)

J O H N M C L Y N N, a witness called by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEWMAN:

Q Mr. McLynn, where do you live?

A I live in Arlington, Virginia.

Q Would you speak up?

A I live in Arlington, Virginia.

Q What is your occupation?

A I own a couple of record stores.

Q Where are they located?

A Both of them are located in Washington, D.C.

Q What are the names of those record stores?

A Orpheus I and II.

Q How long have you owned those record stores?

A Five years.

Q Are these stores that retail records to the public?

A Yes.

Q How long have you been in the business of retailing records?

A About ten years.

Q What did you do before that?

A Before that I was a student.

Q What is your education?

A Two years of junior college and one year of regular college.

Q What, if any, specialty do your two record stores have?

A Both of them are pop oriented stores.

Q I have trouble hearing you.

A Both stores are pop oriented stores. They are populat music more so than let's say classical music,

but they are both full length.

MR. CONCAGH: I object to this witness testifying to things after 1970 which is the issue I believe regarding his testimony.

THE COURT: When did you go in the record business?

THE WITNESS: Well, I was working in a record store prior to that.

THE COURT: Let him finish his qualifications.

MR. CONCAGH: All right.

Q Is Orpheus as a record store consulted by any record companies in any fashion for any purpose?

A Yes.

Q If so, please tell us what?

A We are consulted by several record companies on viability of sales of certain albums and the potential sales in certain markets. ABC records consults with us on pop products.

Arista, which is a newer lable, consults with us on jazz and pop product.

We are consulted by Warner Bros. also mainly on rock product and we are consulted with Electra also on folk product.

Q What is the nature of the consultation, what

is the purpose of it?

A The purpose is they are trying to get a feel of what is going to happen when they release a record and I assume that they are trying to find out how they should market and how well it will sell after they market it since they have to determine how many they are going to make of an album and they have to know how much it is going to sell.

This is one of their ways of finding out, by inquiring of retailers they consider in important markets.

Q This is of proposed releases of records?

A Right, and also to things that they have in the works that they haven't released yet, but they intend to.

Q How does Orpheus rate among the retail record stores in Washington in terms of sales?

A We are probably, as stores we are probably in the top ten somewhere. Probably more in the top five.

Q When you speak of these consultations, in what particular field of music, if any, are you consulted?

A Mainly with popular music. Again rock product, also folk and blues product, some jazz.

Q Have you ever published any material in

the popular folk arts field with reference to recordings?

A No, I haven't.

Q Have you ever been a reporter for any industry magazines?

A Yes, Billboard and also a reporter for Walrus.

Q I am having a little trouble.

A It is two magazines, Billboard and Walrus.

Q Walrus?

A Yes.

Q What is Walrus?

A Walrus is mainly an in-industry magazine, mainly of progressive music.

Q Progressive music?

A Right, what they consider progressive.

Q Do you yourself play any musical instruments?

A Yes.

Q Which ones are those?

A I play guitar, cello, base, piano.

Q Have you ever performed on any of these instruments professionally?

A Yes, I have.

Q You have earned income from that?

A Minor.

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Q Does your store concentrate on any one record manufacturer or record label?

A No, the store is a full line.

Q Approximately how many labels do you carry in your line of merchandise?

A I really don't know. I carry all the major labels and most of the minor and esoteric labels. I have no idea how many labels that would come to.

Q Have you ever heard of an artist named John Hurt?

A Yes, I have.

Q Have you ever sold any of his records in any of your stores?

A Yes, I have.

Q Which records have you sold?

A I have sold both Piedmont Records and all four of the Vanguard Records.

Q I couldn't hear the first part of it.

THE COURT: He has sold them all. Let's go. Frame the next question.

Q That includes the Piedmont Records?

A Right.

Q What kind of a market does John Hurt appeal to?

A Basically he is a blues folk artist. He

appeals to that market, but he also crosses over somewhat into the pop market. He sells a little more broadly than just to people who buy blues and folk records.

Q Is he in any way meek in his respect?

A Yes, he is the more traditional blues singer, the only one I know of who crossed over into any other market other than his specialty.

Q Is he a significant blues singer among blues singers?

A Yes, definitely.

Q To what age group would you say he appeals?

A 18 to 30.

Q Have you heard the John Hurt records that you have sold in your store?

A Yes, I have.

Q Have you heard any of the recordings of John Hurt's music that the plaintiff in this case Music Research has in its vault or library?

A Yes, I have.

Q Approximately how much of that Music Research material have you heard?

A I have heard about four to five hours.

Q How would you say the quality of those recordings of Music Research's library compare with the

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recordings say on Vanguard or Piedmont?

MR. CONCAGH: Objection to his qualifications.

THE COURT: I will permit you to have a voir dire as to his qualifications.

MR. NEWMAN: At this point, your Honor.

THE COURT: If you have finished qualifying him, have you?

MR. NEWMAN: Yes, I have.

VOIR DIRE EXAMINATION

BY MR. CONCAGH:

Q Mr. McLynn, did you ever advise record companies in 1970?

A Did I advise record companies in 1970?

Q Yes.

A Yes.

Q About projected sales?

A One could at that time, yes.

Q Who was?

A That was United Artists.

Q Who else?

A At that time just United Artists.

Q Did you ever advise record companies in 1969 about the projected sales?

A At that time I was working for another record

store and I was asked several times, but not directly. I was referred to.

Q Did you ever advise record companies in 1969 with regard to projected sales?

A Not directly, no.

Q Did you in 1968 ever advise record companies with regard to projected sales of records for the record companies?

A No.

Q Other than the one bit of advice you gave United Artists in 1970, have you given any record company any advice on projected sales prior to 1970?

A Not directly, no.

Q Have you ever been involved in the production of musical records?

A No.

Q Have you ever participated in making a master tape?

A No. Not directly.

Q Have you ever participated in any way in putting out any record album?

A No, I haven't.

MR. CONCAGH: Your Honor, I respectfully ask that this witness' testimony heretofore be stricken

and any questions regarding his opinion on anything not be allowed to be asked because he obviously lacks the qualifications of an expert.

THE COURT: I will deny the motion. I will permit him to be examined. The jury will give his testimony such weight and significance as they believe that his experience and qualifications as testified to here would justify.

BY MR. NEWMAN:

Q How many Vanguard recordings of John Hurt are you familiar with?

THE COURT: You have an open question which I am now permitting you to ask so why don't you ask it.

MR. NEWMAN: I'm sorry, your Honor.

Q Let's go back to the question as to how the quality of the Music Research tapes which you heard compare with the quality of the Piedmont tapes and the quality of -- not the Piedmont tapes, the Piedmont published records and the Vanguard published records.

A I think it is on the same quality as the first two Vanguard records and the two Piedmont records, but is a better quality than the third Vanguard record.

THE COURT: Better in what way?

THE WITNESS: The performances are better

and the actual recording quality is better.

Q What about the fourth Vanguard record known as the"Last Sessions"of John Hurt. Are you familiar with that at all?

A Just vaguely. I haven't listened to it intently.

THE COURT: You what?

THE WITNESS: I haven't listened to it intently. I have heard it.

Q You are confining your opinion to the first three of the Vanguard records?

A Yes.

Q Of the first three Vanguard records, which one of them has been, if any, the leading seller of the three?

A The third one.

Q Was that the two-record set?

A Yes.

Q What was the retail price of that?

A I think originally it was released at a $5.98 list.

Q Is it selling at a different price?

A $7.98 list.

Q Since when?

A Well, the price of records generally went

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up I think in July a year ago and at that time I think the price of the record went from $5.98 to $7.98.

Q Did your stores sell many of that third record, the two-volume set of Vanguard?

A Yes, it did.

Q About how many did it sell in 1970?

A In 1970 specifically?

Q Yes.

A In 1970, well, it sold probably about 300 to 500 in '70.

Q 3,500?

A No, 300 to 500.

Q I am sorry. Subsequent to that time?

A It has probably sold another 300 since then.

Q How about the first two Vanguard records?

A The first two Vanguards were already out and we just had catalog sales from those. We would probably sell anywhere from 50 to 100 of each of those a year.

Q If Music Research had published a release in 1970, in or about 1970, a two-volume record set of John Hurt music retailing at $9.95 for two record sets, well, would it have been able to compete with the two-record Vanguard set?

MR. CONCAGH: Objection on qualifications.

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THE COURT: There ought to be the underlying question of whether he has such an opinion. Do you have an opinion with regard to that?

THE WITNESS: Yes, I do.

THE COURT: I will take his opinion.

Objection overruled.

A I feel that the course of two Adelphi records would not have been able to compete with the Vanguard.

Q Why do you say that?

A Price.

Q Could you explain that, please?

A The two-record Vanguard was selling at $5.95 list where $9.95 list a customer, you know, confronted with their option, would choose the lesser of the two in price.

Q Regardless of the quality?

A Right, since you can't audition records before you buy them.

THE COURT: You can't listen to a record before you buy it any more?

THE WITNESS: No, you can't, they are all sealed.

THE COURT: Don't you play records in a record store?

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THE WITNESS: You don't audion them for the customers.

Q Suppose that there had been no Vanguard release of that two-record album in 1970 and instead there had been a release of a Music Research two-volume album at $9.95 containing material which you have heard, how would that have done in your opinion in the market-place?

MR. CONCAGH: Objection. This is his opinion but there is no foundation in the question.

THE COURT: Because the time isn't fixed?

MR. CONCAGH: Yes, sir.

THE COURT: I think that is correct.

Q Let me talk about 1970 alone.

A Okay.

Q Could you give us your opinion on that?

A I think it would have sold not as well as the Vanguard because of the higher price, but I think it would have sold 75 to 80 per cent as well.

Q Could you give us your estimate of what the total figure would be nationwide?

A Nationwide.

MR. CONCAGH: Objection to his qualifications nationwide.

THE COURT: Do you have any knowledge of nationwide sales?

THE WITNESS: Yes, when I have sold new releases, they give me what our share of the market should do. Each metropolitan market, they give how much you should do on a certain kind of album. We are given a quota.

MR. VASSALLO: Your Honor, when the witness talks to you, we cannot hear. I am sorry.

THE COURT: Read it.

(Record read.)

THE COURT: I will let him testify.

Q Can you proceed and give us your estimate for 1970 of how many of the Music Research two-volume albums could have been sold had there been no two-record Vanguard album?

THE COURT: He means Adelphi.

Q Nationwide, I am sorry.

A Nationwide, I would estimate about 30,000 to 50,000.

Q It is just a little bit hard for me.

A I said between 30,000 and 50,000.

Q Between 30,000 and 50,000?

A Right.

Q Subsequent to 1970 do you have any estimate for the years subsequent to that?

A After that, I would say that it would probably sell, you know, between 3,000 and 5,000 a year on catalog sales.

Q Whereas if it had to compete with a Vanguard two-volume or two-record set?

A I would say about 5,000 to 10,000.

Q When, in 1970?

A In '70, right.

Q And subsequent years?

A Catalog sales probably about 1,000 a year.

Q Could you explain what you mean by catalog sales?

A Catalog sales are, you know, it is what we refer to in the industry as items released and they continue to sell year after year and they are things kept in the catalog as a catalog item. Continued sales after its initial impression on the market.

Q Did the quality of the two-volume, two-record Vanguard album have any effect in the marketplace?

A Yes, it did.

Q What was that effect?

A It was definitely detrimental to Mississippi

John Hurt.

Q In what way?

A Well, the quality of the recording wasn't up to what it should have been. Also it was billed as the Best of Album and which it really wasn't.

Q Did the quality have anything to do with it being a live performance?

A I think so, yes.

Q Did the quality of this two-record Vanguard album in any way affect in your opinion the sales of the last John Hurt album put out by Vanguard?

A Oh definitely, yes.

MR. CONCAGH: Objection. Vanguard put out the fourth album and he is asking him if Vanguard's fourth album was affected by Vanguard's third album.

THE COURT: That is what he has asked the man and I will permit him to testify.

A Yes, it hurt the sales.

Q In what way?

A I don't think the album sold as well. I think the credibility of the artist was changed by the third album.

Q Because of what aspect of the third album?

A Because of the lack of quality of the third

album.

MR. NEWMAN: May I just have a moment, your Honor?

(Pause.)

Q Approximately how much of the Music Research vault material did you listen to?

MR. CONCAGH: Objection, asked and answered.

THE COURT: Sustained. It has been asked and answered.

Q I am not sure whether I recall.

THE COURT: That is too bad. The jury recalls. Frame another question.

Q Approximately how many long-playing records could have been made, commercial long playing records could have been made from the material in the Music Research vault that you heard?

A I would say about two albums.

Q If they were released today, how would they do in the marketplace?

A I don't think they would do very well.

Q Could you give us any idea of how well they would do?

A On nationwide sales about 5,000 pieces.

Q In the first year?

A Yes.

Q And thereafter?

A Probably much less, probably 500 to 1,000 pieces.

Q When you say 5,000, are you referring to the aggregate of two records or separately?

A Separately.

Q 5,000 each?

A Right.

MR. NEWMAN: I have nothing further of this witness.

CROSS EXAMINATION

BY MR. CONCAGH:

MR. CONCAGH: I again ask that this entire line of testimony be stricken because he hasn't stated anywhere that I have heard that he can state with a reasonable degree of certainty.

THE COURT: Motion denied.

Cross examine him or sit down. Let's go. It's getting late.

Q Mr. McLynn, have you ever actively engaged in making a master tape from a tape such as the four or five hours of tape you heard?

A No.

Q Do you have any idea as to how to transport the quality from the tape that you heard to the master to the record album?

A Not technically, no.

Q When you say you heard approximately two albums, you are basing that on insufficient evidence, isn't that right?

MR. NEWMAN: Objection, your Honor.

THE COURT: Sustained. That is a question for the jury.

Q What were these projections you were speaking about in your testimony. Can you tell us what they were?

A Relative to what the record sales should be naturally.

Q Who makes these projections?

A The companies.

Q Among these companies have you ever heard of a company called Vanguard Recording Society?

A Yes, I have.

Q What would you say about its size of the folk market sharewise, percentagewise?

A Percentagewise of the folk market?

Q Yes.

A When?

Q In 1970?

A In 1970. I would say that at that point I would say that they could be as large as 6 or 7 per cent of the overall market.

Q Do you know Mr. Maynard Solomon?

A No, I don't.

MR. CONCAGH: I have no further questions.

THE COURT: Do you have anything?

MR. VASSALLO: I have none.

THE COURT: Any redirect?

MR. NEWMAN: No, your Honor.

THE COURT: All right, sir, you are excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. NEWMAN: Eugene Denson.

E U G E N E D E N S O N, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEWMAN:

Q Mr. Denson, how old are you?

A I am 35.

Q What is your occupation?

A I am the head of a record company.

Q Where do you live?

A I live in Oakland, California.

Q How long have you lived there?

A I have lived there for seven years.

Q What is the name of the record company of which you are the head?

A It is Kicking Mule Records.

Q How long have you had that position as head of this record company?

A Since we formed it in 1973. I have a partner.

Q I want to ask you so I can hear and of course so the jury can hear.

A I am sorry. I have been the head of the company since my partner and I formed it in 1973.

Q What sort of music is put out by Kicking Mule Record Company?

A We put out folk, guitar and banjo.

Q Are you connected with any other large record company?

A I am not.

Q Prior to the time when you established your own record company, had you been affiliated with any other record companies?

A I was at one time a partner in Tacoma

Records.

Q Where was that located?

A Tacoma Records was located in Berkeley for a while and in Washington, D.C. for a while.

Q When you say Berkeley, you are referring to Berkeley, California?

A Berkely, California.

Q When was it you were connected with Tacoma Records?

A From about 1963 into 1967.

Q What kind of business was Tacoma Records in in respect to the record industry in general?

A We produced folk music, particularly folk guitar.

Q What was your position with Tacoma?

A I was the business manager of Tacoma.

Q Between the time you were at Tacoma and the time that you started Kicking Mule Records or became connected with that company, what was your occupation?

A I was the business manager for rock and roll bands.

Q What was the name of that rock and roll band?

A There were several. Among them Country Joe and the Fish, Big Brother and the Holding Company and

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the Joy of Cooking.

Q You managed Country Joe and the Fish from when to when?

A From 1965 until they broke up around 1971.

Q Have you ever been connected with any music stores?

A Yes. I was the administative dean of the Bluberwaltz School of Music for two years.

Q What sort of music is taught there?

A Rock and roll and folk music.

Q Have you ever done any research on blues?

A Yes, before I went to work with Tacoma I was an active blues researcher looking up, trying to find old blues artists and their recordings.

Q When was that?

A That would be in 1962 and '63.

Q Have you ever been connected in any way with Music Research?

A Yes, I was at one time a stockholder.

Q Can you tell us when that was?

A That wasin about 1963 and '64, in the period that they are discussing the lawsuit with the Spotswoods.

Q Before the lawsuit, during or after?

A From just before until just after.

Q What periods of time would that be in months?

A I would say six months to a year.

Q During that time did you have occasion to hear the tapes made of recordings or rather recordings made on tape of Mississippi John Hurt?

A Yes, I did.

Q How many of those tapes or how many hours worth of those tapes did you listen to?

A I would say that I have heard over ten hours of those tapes and I have been present at perhaps 50 Mississippi John Hurt concerts.

Q In your position as a publisher of guitar music records, are you familiar with folk guitar players such as Mississippi John Hurt?

A Yes, I am.

Q How does he rank in your opinion among the guitar playing and blues singers, if that is the proper description of him?

A Mississippi John Hurt is one of the three of the best of the folk blues players.

Q The best in a particular period of time or a particular area?

A Well, the best of the blues flourished in the '20s of the people who recorded in the '20s, John

was one of the three best. Of the people who have had influence in the '60s and '70s, he is perhaps number one.

Q Is that in the world?

A That is in the world.

Q Have you heard John Hurt's performances on Vanguard Records?

A Yes, I have.

Q And on Piedmont Records?

A Yes, I have.

Q How does the material that you have heard in the vaults of Music Research, how much material would you say is there to make long-playing records, if any?

MR. CONCAGH: Objection to his qualifications.

THE COURT: I will overrule it.

A I would say there is enough material there to make five albums.

THE COURT: That you have heard he asked you.

A Of the material I have heard, I would say there is enough material to make two to three albums.

Q How does the quality of that material compare with the quality on the Vanguard Records that you have heard?

A I believe it is equal, perhaps better.

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Q How about the Piedmont material?

A I would say it is as good as the Piedmont material.

Q And referring now specifically to the different material, how does the Music Research material compare to the, for example, the first two Vanguard recordings?

A The tape material or the issued material?

Q How does the Research tape material compare to the two Vanguard recordings issued?

A I would say it is as good, possibly better, possibly not.

Q I refer to the Vanguard double record set, how does the Music Research compare in quality of performance and sound and so forth to that?

A I'm sorry, I am unable to say.

Q You don't know that?

A I don't know that one.

Q In your capacity as one of the partners in Kicking Mule Records, are you familiar with the profit margins of small record companies?

A Yes, I am.

Q Is Kicking Mule Records a small record company?

A Yes, it is.

Q You make money, I take it?

A Yes, we are doing very nicely.

Q Approximately how much per long-playing 12 inch disk request a record company of the size of yours make on a record such as one of John Hurt? Let's talk about 1970 first of all.

A In 1970 before the price of the vinyl went up, you could make what they call a gross profit of perhaps $1.50 to $1.60. That would be your profit before you took out fixed expenses. Fixed expenses would have to be prorated according to how many records you sold.

Q Assuming the sales of 30,000 records in 1970, what would your profit be per record?

A I would say you could make between $1.40 and $1.50. I am sorry I can't be more specific, but there are quite a few variables.

Q That is net?

A That is net. That is after you have paid all your expenses.

Q Are there any distribution costs included in that?

A No, you sell your records at wholesale. The distribution costs are then absorbed by the wholesaler.

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Q How does your record company compare in size to Adelphi Records to your knowledge?

A I believe we are about the same size now.

Q After the energy crisis, the price of vinyl went up, what happened to the profit margin?

A We lost between a nickel and a dime.

Q That means 1974 or so?

A 1974 and of course now.

Q Had your company been given the Music Research tapes to publish in 1970, how many copies of those records made from those tapes could you have sold?

MR. CONCAGH: Objection.

No proper foundation.

MR. NEWMAN: In what respect, your Honor?

THE COURT: You would have to ask him to assume what he was going to offer and ask him his opinion.

MR.NEWMAN: I beg your pardon.

Q Assuming that there had been no competition in the marketplace in the form of records released by Vanguard Records in 1970.

THE COURT: With Hurt on them.

Q With John Hurt playing on them and your company had been in existence at that time and had the rights to release to the public material from the Music Research

vaults, how many copies over the life of the 12-inch record would you have been able to sell?

MR. CONCAGH: Objection.

THE COURT: Sustained. Same ruling.

MR. NEWMAN: I am sorry, your Honor.

THE COURT: You have to give him an assumed state of facts, which would include how many records and how many songs. Whether it was a double album or a single album and when it was to be released. Based on these assumptions you are asking him to make, ask him if he has an opinion.

Q In an effort to save time I will make assumptions, repeat the assumptions and add to that the assumption that we are talking about a single 12-inch long-playing record of John Hurt taken from the Music Research archives?

MR. CONCAGH: I object to this, your Honor.

THE COURT: I am going to let him answer. I won't waste any more time with this.

A Between 30 and 50,000.

THE COURT: Frame the next question.

Q Over what period of time?

A Five to seven years.

Q That would be per disk?

A Per disk, yes. Per title.

Q Supposing that there were five long-playing records issued under the same circumstances as those we have just talked about?

A You mean five records issued over a period of years?

Q Over a period of years?

A Yes.

Q Starting in 1970 up to the present, approximately how many records would have been sold?

A By the time they had all finished selling, I think you could have sold about the same quantity of each, say 30, 000 to 50,000.

Q Times five?

A Times five.

Q That is over the catalog life?

A That is over the catalog life.

Q What is the catalog life roughly?

A Say five to seven years. You never know until you get there.

Q Had such a release of a 12-inch long-playing record of the Music Research material been released in 1970 in the face of what actually occurred, the release of the Vanguard two-record set at that time, what would

have been the sales of the release that you would have put out assuming you were into that market of a single 12-inch record containing Music Research's material on John Hurt?

A Substantially lower, I would say 5,000, 7,000, that range.

Q What about if such a record had been released in subsequent years. Let's take the assumption of the five records being released over these past five years. How would they have done?

A They would have done about as well.

Q About as well?

A About 5,000 to 7,000 each if they had been issued already. We are speaking now of records on the market by 1975.

Q That is over the catalog life?

A That is over the catalog life.

MR. NEWMAN: I have no further questions.

CROSS EXAMINATION

BY MR. CONCAGH:

Q I notice you are using notes. Are you using notes to refresh your memory?

A Yes, I am.

Q Would you tell us what those notes are?

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A I have made a listing of the various steps that go into the production of records as they were in 1970 and as they are in 1975.

Q Did you have conversations with Mr. Newman about those notes?

A About these notes?

Q Yes.

A No, sir.

Q When did you make the notes?

A I made these notes about an hour ago.

Q Do you know Mr. Maynard Solomon?

A Yes, I do.

Q Do you know what position he holds with Vanguard Records?

A I believe he owns Vanguard Records or half of it.

Q Have you ever had any business dealings with him?

A Yes, my band Country Joe and the Fish recorded for Vanguard Records for the life of the bands, six or seven years.

Q Would you agree with the statement that Mr. Solomon enjoys a very wide and high reputation in the industry?

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MR. NEWMAN: Objection to the form of the question, your Honor.

THE COURT: It is cross examination. I will allow it.

MR. NEWMAN: I don't know what wide and high means.

Q If he doesn't.

A Everyone in the Music Industry has some enemies. Maynard is well thought of.

Q Maynard is well thought of?

A In that context.

Q What about his expertise as a record publisher?

A I believe he is competent.

Q What about his opinion on projected sales. Would you say he had a pretty good reputation for having a good opinion on projected sales of records?

A I have never seen him quoted in the industry for that, but he certainly ought to in his position.

Q That's right.

MR. NEWMAN: Objection, your Honor.

THE COURT: Yes, strike out the "that's right." I won't have any more of that, Mr. Concagh. You are not a witness. You are not to tell the jury that's right.

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They will decide whether that's right or not. Next question, please.

MR. CONCAGH: I have no further questions.

THE COURT: Sit down.

Mr. Vassallo.

MR. VASSALLO: I have none.

THE COURT: Any redirect?

MR. NEWMAN: No, your HOnor.

THE COURT: All right, sir, have a nice trip back to California.

Call the next witness.

(Witness excused.)

MR. NEWMAN: I call Maynard Solomon, your Honor.

THE COURT: All right.

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MAYNARD SOLOMON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

THE COURT: Go ahead.

MR. NEWMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. NEWMAN:

Q Mr. Solomon, can you tell us your age, please?

A 45.

Q How long have you been in the record business?

A 25 years.

Q Do you own your own record company?

A I am partial owner of a record company.

Q You own the major stock of the record company you own?

A No.

Q Is it you and your family?

A I beg your pardon?

Q Is Vanguard Recording Society owned by you and your family?

A Yes.

Q You have been connected with Vanguard Recording Society during your entire business career?

A That is correct.

Q Since your graduation from college in 1950?

A Yes.

Q Mr. Solomon, when did you first hear of Mississippi John Hurt?

A In the early 1960s.

Q Can you give me anything more specific than that?

A No, I can't.

Q Did you hear that he was discovered by Tom Hoskins?

A No, I did not.

Q Did you ever hear that he was discovered by Tom Hoskins outside of what you have heard at the trial here?

A Yes.

Q When did you first hear that?

A In about 1963 or '64.

Q Did you so state in any of your record albums?

A I don't know.

Q Did you so state that Tom Hoskins discovered --

MR. CONCAGH: I object. There is no inconsistency here. He is apparently trying to cross-

examine the witness.

THE COURT: I take it Mr. Solomon is the president of Vanguard which is an adverse party.

MR. VASSALLO: I would object, your Honor, solely on the ground that it is so widely immaterial to anything having to do with the case. What he chooses to put on an album jacket --

THE COURT: I think that is already in evidence. I think we ought to go into something else. If it says that the Vanguard Company recognizes that Mr. Hoskins recognized John Hurt, I think you can read that in summation.

MR. NEWMAN: I don't think the jury has seen these. They just came in today.

THE COURT: Continue to examine this witness and later on you can show them the jacket.

Q Who is Samuel Charters?

A He was a former employee of Vanguard Records.

Q Did he write the backs of jackets or jacket liners?

A On rare occasions, yes, sir.

Q Did he write the jacket liner for Exhibit 6A, Blues at Newport, 1964, part 2?

A I don't know.

Q Was Mississippi John Hurt a significant arties in that album for you?

A No more so than several other of the listed artists. Not less so either.

Q Whose picture is on the cover?

THE COURT: It is in evidence. It speaks for itself. Ask the next question.

MR. NEWMAN: It doesn't say whose picture it is, your Honor.

THE COURT: It doesn't. All right. I thought it said so. Doesn't it say on there anywhere whose picture it is?

A That is a photograph of Mississippi John Hurt taken from the rear facing an audience.

Q You will have to speak up. I am sure the jury can't hear you.

THE COURT: All right, it is Mr. Hurt, let's go on.

Hand that to the clerk, please.

MR. NEWMAN: It is in evidence, your Honor.

THE COURT: I understand that. I would like to see it. You may continue.

Q When you heard Mississippi John Hurt you wanted him to record his music, I take it?

MR. CONCAGH: Objection, he is leading his own witness.

THE COURT: Overruled.

A Would you restate the question?

Q After you had heard of Mississippi John Hurt and you thought his music was of sufficient quality so that you wanted to have his music recorded on Vanguard and published by Vanguard, is that correct?

A In connection with the Newport Folk Festival albums, yes.

Q In fact, you brought out two Newport Folk Festival albums containing John Hurt's music?

A Portions of several New York Festival contained several song by John Hurt.

Q How many such albums were put out containing John Hurt's music?

A Four.

Q Did you give credit to any company for the rights to use John Hurt's music in any of those albums?

A Yes.

Q To whom did you give credit?

A To Piedmont Records.

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Q Who was Piedmont Records to your knowledge at thattime, talking now about 1963 and 1964?

A I did not know at that time.

Q Did you know that Piedmont Records was a division of or the label of Music Research, Inc. in 1963 or 1964?

MR. CONCAGH: Objection.

THE COURT: I understood the witness to just say he didn't know in the last question and answer. I will allow it. It may be asked and answered.

A No, I don't think so.

Q Do you know or not? Did you know or not?

A No.

Q Let me show you a letter dated June 11, 1963 on the stationery of Vanguard Recording Society.

Does that contain your signature?

A Yes, it does.

Q It is addressed to Mississippi John Hurt where?

A Care of Dick Spottswood, president of Music, Inc.

Q Was Music, Inc. a mistake and it was actually president, Music Research, Inc.?

A I have no idea.

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MR. CONCAGH: I object.

THE COURT: It has been answered. I will let it stand.

Q Did you know that Dick Spottswood was president of Music Research, Inc. at the time you wrote this letter?

A No, I did not.

Q I show you a letter dated June 21, 1963, addressed to you and signed by Richard Spottswood.

Is that letter in response to the one you just looked at?

THE COURT: Are these letters in the pretrial memo?

MR. NEWMAN: They certainly are.

THE COURT: Offer them in evidence. The validity, the date and everything is conceded. Put it in evidence. Let's go.

MR. NEWMAN: I offer these in evidence.

I would like to get an answer to the question.

THE COURT: What is the question? What are you trying to ask him? Whether he signed it?

Q Did he receive this letter?

THE COURT: He received it. He doesn't even have to answer. That is stipulated.

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Q Did you know when you received the letter that Richard Spottswood was president of Music Research, Inc.?

A I don't know.

(Plaintiffs' Exhibits 93 and 94 were received in evidence)

MR. DAVIDSON: Those are on the pretrial order as Exhibits 1 and 3.

Q Did there come a time when you knew that Mr. Spottswood was connected with Music Research, Inc. and Music Research, Inc. had a connection with Piedmont for whom John Hurt was recording in 1963 and 1964?

A Perhaps.

Q To the best of your recollection when did that time come?

A Sometime in 1964.

Q Not until 1964?

A I don't believe so.

Q Are you sure it was not 1963?

A I have already answered, sir.

Q Could you answer my question?

THE COURT: He says he didn't know. Let's go on.

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Q I show you another letter on the stationery of Vanguard Recording Society. That, according to the pretrial order was sent by you to Richard Spottswood, president Music Research, Inc., Arlington, Virginia. You will note that it is dated 1963.

A Is there a question, sir?

Q I am sorry, I can't even hear you and I am standing next to you. Could you speak up?

MR. CONCAGH: I heard him, he said is there a question.

Q Yes, does this help you, does this change your testimony as to whether you knew that Music Research had any rights with respect to John Hurt in 1963?

A It does not change my testimony. You did not ask that question, sir.

THE COURT: Don't argue with the lawyer. Just answer the questions the best you can so we can move this trial along. Aren't you tired of sitting in this courtroom all this week?

THE WITNESS: I sure am.

THE COURT: Then answer the questions. Frame the next question.

MR. NEWMAN: I offer this in evidence and I

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would like to pass these three documents to the jury.

THE COURT: All right, they are received in evidence. Frame the next question.

(Plaintiffs' Exhibit 95 was received in evidence)

Q It is your testimony that to the best of your recollection you did not hear of the fact that there was a connection between Music Research, on the one hand, and Piedmont Records and John Hurt, on the other hand, until 1964?

MR. CONCAGH: Objection.

THE COURT: I will let it be answered.

Q Is that correct, sir?

A If then.

Q If then. What was the event that called this fact to your attention?

A The issuance of the recordings of 1964 Newport Folk Festival, which bear the legend, Mississippi John Hurt appears through the courtesy of Piedmont Records.

Q Who put that on or caused that legend to be put on?

A I have no idea.

THE COURT: I think what he is asking is

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was it an employee of Vanguard that put that on.

A Oh, yes.

THE COURT: That is obvious, isn't it? Let's go on to something that isn't obvious. This is Vanguard's own jacket. Somebody working for Vanguard put the words on it.

MR. NEWMAN: That is correct, your Honor.

THE COURT: All right,everybody here knows. It is Vanguard's recording jacket.

Q Did you yourself personally work on the Newport Folk Festival albums?

A On some of them, yes.

Q On the ones that contained the credit line to Music Research?

A I would have to see the albums in question. I did not work on any of the blues albums.

Q I will show you all four of the Newport Folk Festival albums and ask you which ones were the ones that you worked on and qhich ones you didn't.

THE COURT: Does it matter who worked on them? They were all put out by Vanguage.

A I worked on this one.

THE COURT: Which one is that?

Q 5B, headed Newport Folk Festival 1963, Volume 1.

THE COURT: He worked on 5B.

Q The judge has said that you are Vanguard, is that correct?

THE COURT: Well, for these purposes. Let's not argue about whether he is or not. He is president and a substantial shareholder. Let's go forward.

Q Do you want to read it?

THE COURT: No, he doesn't want to read it. Frame a question. Don't you want to finish this trial? I do. Everybody in that jury box does and this gentleman just said he did. Frame the next question or sit down.

MR. NEWMAN: I offer in evidence some more exhibits, your Honor.

THE COURT: All right, hand them to the clerk.

MR. NEWMAN: I will check with Mr. Davidson on the numbering.

THE COURT: Let's get the testimony of this man. You can offer the exhibits later.

MR. NEWMAN: I will show them to opposing